(11)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 84-678 SA

SUSAN HAINES, as Administratrix ad Prosequendum and Administratrix of the Estate of PETER F. ROSSI,

Plaintiff,

vs.

LIGGETT GROUP, INC., et al,

Defendants.

DEPOSITION OF:
MATITYAHU MARCUS

Thursday, October 3, 1991
Short Hills, New Jersey

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(Before Gary M. Talpins, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, held at the offices of Messrs. Budd, Larner, Gross, Rosenbaum, Greenberg & Sade, 150 John F. Kennedy Parkway, Short Hills, New Jersey, on Thursday, October 3, 1991, commencing at 10:20 a.m.)

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(Documents were received and premarked Marcus 1 and Marcus 2 for identification.)

M A T I T Y A H U M A R C U S,
[DELETED]
Sworn.

DIRECT EXAMINATION BY MR. GARNICK:

Q. Dr. Marcus, good morning.

A. Good morning.

Q. My name is Murray Garnick. We introduced ourselves off the record. I represent Philip Morris. Let me begin by doing the traditional presentation of the check. Here is a check for the amount of $2,000 covering today's

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Marcus - direct

deposition.

A. Thank you.

Q. Could you state your full name for the record, please?

A. My name is Matityahu Marcus, spelled M-a-t-i-t-y-a-h-u, Marcus, M-a-r-c-u-s.

Q. And could you tell us your date of birth, please?

A. [DELETED] 1934.

Q. And your address?

A. [DELETED]

Q. And you are a professor at Rutgers. Is that correct?

A. Yes.

Q. In economics?

A. Yes.

Q. Doctor, I gather you have been deposed before. Is that right?

A. Yes.

Q. So you know that if you don't understand a question, you should ask me and I will be happy to rephrase it?

A. I understand.

Q. And you know that if you want to take a

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break, you should let us know. I believe that two breaks have been scheduled, one in the morning and one in the afternoon after lunch. Do you understand that?

A. I do.

Q. Doctor, I will assume that the answers that you give are to a reasonable degree of economic probability unless you say otherwise. Is that agreeable to you?

A. Yes.

Q. Doctor, I have marked for identification a March 15th letter from Cindy Walters that purports to be your expert report in this matter. Have you seen that before?

A. Yes, I have.

Q. And when was that?

A. I have seen it sometime after it was prepared.

Q. Excuse me?

A. I have seen it sometime after it was prepared.

Q. Do you recall when you saw it?

A. No.

Q. Do you recall whether you saw it before

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or after March 15th?

A. I don't recall seeing the letter before March 15th.

Q. Do you recall anything about the letter prior to March 15th?

A. Yes, I recall discussing it with Miss Walters.

Q. Can you tell me the substance of that discussion, please?

A. Yes. The substance of the discussion was actually summarized in next to the last paragraph on page two, where, continuing to the next one, the last paragraph, in effect, I told her that my very preliminary review of the materials that she had sent me indicated that it's probable that substantial economic loss has been sustained.

Q. I didn't quite understand. Did you discuss the contents of both the second to the last paragraph and the last paragraph with Ms. Walters at that time?

A. No, what I said is that I have given her an opinion which essentially is stated in the letter. I can't remember it word for word but in effect, after reviewing materials that she had sent

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me earlier, I expressed the opinion that I have seen enough there to indicate that --

(Whereupon there was a brief interruption.)

A. I don't recall exactly the point where I stopped but the substance of what I was trying to say is we had a discussion where she asked me can you offer an opinion whether there has been an economic loss based on what you have seen and my answer to that was yes. In fact, I thought that there was likely to be a substantial, that is, some significant economic loss based upon the documents that I reviewed.

Q. At that time, had you done any calculations?

A. No specific calculation, no.

Q. In that telephone call, did you talk about loss of services such as companionship, guidance and advice?

A. The subject came up, as well, as an area of potential loss but the opinion that I have given at the time concerning the -- when I said there is a significant pecuniary loss, or whatever words are said, essentially, at the time, based on

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my review of the tax returns, there was sufficient for me to opine that there is likely to be a significant loss.

Q. Doctor, I gather that this Exhibit No. 1 accurately reflects your opinions in this case as far as it goes?

A. What is Exhibit No. 1?

Q. I'm sorry, it's the one that I have given you.

A. Would you call my attention to a specific paragraph, please?

Q. Why don't you read it over. Does the letter as a whole reflect your opinions in this case?

A. I will take it paragraph by paragraph.

Q. Okay.

A. If you don't mind. And I'm beginning with page two. I don't think there is a problem with the first paragraph; second paragraph is okay; third paragraph is okay. Fourth paragraph is not absolutely clear. Let's put it this way: It can be clarified further.

Q. Could you please do that?

A. Yes. I have calculated the loss of

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past income and loss of future income and I have calculated the loss of household services. However, I have not calculated the loss of companionship, guidance and advice that resulted from the death.

Q. Doctor, did Ms. Walters ask you to calculate the loss of companionship, guidance and advice?

A. She did not ask me to put a number on the loss of companionship, guidance and advice.

Q. Did she ask you not to put a number?

A. She did not ask me to quantify the dollar value of companionship, guidance and advice at the time that we talked.

Q. Did she tell you not to quantify that component?

A. I can't tell you that. I can tell you that my recollection is it was pretty much understood that I was not going to put a specific dollar amount on the companionship, guidance and advice.

Q. Was that an understanding, then, that you and Ms. Walters had?

A. Yes.

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MS. WALTERS: That's what he just said.

MR. GARNICK: Thank you.

Q. Why didn't you calculate the loss of companionship, guidance and advice?

MS. WALTERS: He just answered that.

MR. GARNICK: I don't think he quite did.

Q. Was it because of this understanding?

A. Yes.

Q. Can you tell me why you reached that understanding with her?

A. I can't tell you all the considerations that may have been in her mind so I can't really tell you. It was my impression from this conversation, as I have just elaborated on, that these components were not to be quantified by me at this time.

Q. Did you discuss possible quantification of these components in the future?

MS. WALTERS: Just to cut through this if it will make it easier, at this point, we don't intend to have an economist at trial quantify those aspects of pecuniary loss. We are of the belief that that sort of quantification is best left to

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the jury.

MR. GARNICK: Thank you.

Q. But could you still answer my question.

A. Could I hear it again, please.

(Whereupon the record was read.)

MS. WALTERS: I think that would be privileged. He wasn't asked to do it. He didn't do it. We don't intend to use him for those purposes in the future and now you are asking about conversations that we may have had pertaining to that. I think that's privileged.

MR. GARNICK: I think it's covered by the expert report.

MS. WALTERS: No, the expert report merely says he may discuss the various types of economic or pecuniary losses and that certainly is a type of one and one of the things he can do is discuss that as a type without quantifying it.

MR. GARNICK: I understand that but I think whether he had any discussions about quantifying it is still within the ambit of this report.

MS. WALTERS: No, I think our

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discussions are privileged.

Q. Doctor, if you wanted to, could you quantify the components of companionship, guidance and advice?

A. Are you asking me a general methodological question whether one can?

Q. No, I'm not. I'm asking you in this case, if you are asked to, could you quantify the components of companionship, guidance and advice?

A. Do you ask me whether I have, as I sit here, in my possession all the inputs necessary to quantify companionship, guidance and advice?

Q. Let's start with that, yes.

A. No, I don't.

Q. What additional information would you need to make that quantification?

A. I will need, first of all, a very complete understanding of the relationship between the father and the daughters; I will need to understand how it spanned the areas of companionship, how it included guidance, counsel and advice; I will need to understand the frequency and importance of these services to the children; I will understand and have some more detailed

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information on the frequency. I would say these would be the primary inputs that I, as an economist, would need if I were to put a dollar value on the loss of these services.

Q. Doctor, you prepared economic loss reports in other cases. Isn't that true?

A. I have.

Q. And in some of these cases, you have quantified loss of companionship, guidance and advice?

A. That is correct.

Q. I'm going to hand you what has been marked for identification as Marcus Exhibit 2 and ask if you have seen that before?

A. No.

Q. I will tell you that it is the subpoena which Ms. Walters accepted on your behalf. Let me draw your attention to --

A. I'm sorry, I have not -- no, I have not seen it but I remember being asked about -- I see now the transcript, I have been asked about those by her, yes.

Q. Are you referring, then, to the second page, production request?

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A. Yes.

Q. And you talked about this orally with Ms. Walters?

A. Yes.

Q. Doctor, last Friday Ms. Walters produced some materials in response to this production request and I'm referring to depositions of, I think they are on the table over there, Pamela Rossi, Willis Steinitz, Winifred Rossi, Carolyn Rossi and Susan Haines. Also she produced two collections of papers. These are them. Maybe we should get them marked, as well.

(Whereupon the documents were received and marked Marcus 3 and Marcus 4 for identification.)

Q. Doctor, taking Marcus Exhibit 3 and Marcus Exhibit 4 together along with the depositions, are these a complete set of the documents you produced in response to the subpoena?

A. I'm confused. These were --

MS. WALTERS: Just so I can help the doctor out a little, this is a duplicate of the binder that you were given.

THE WITNESS: Okay, then I have it, all

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right.

A. These were produced by me and sent to counsel.

Q. Marcus Exhibit 4 are papers that you received from Ms. Walters. Is that correct?

A. Yes.

Q. And Marcus Exhibit 3 are materials that you generated yourself?

A. That is correct.

Q. Did you bring anything today other than these materials in response to the subpoena?

MR. GARNICK: Let's get this marked as Marcus Exhibits 5 and 6.

(Whereupon the documents were received and marked Marcus 5 and Marcus 6 for identification.)

Q. Doctor, I marked one sheet of paper Marcus Exhibit 5 and it's ITC personnel file input form dated 1/30/81.

A. Yes, I have that.

Q. You produced that this morning. Is that right?

A. Yes.

Q. Also Marcus 6 is the same kind of form

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and it's dated from 1982. Is that correct?

A. Yes.

Q. And you produced these today. Is that correct?

A. Right.

Q. Can you tell us what they are, please, doctor?

A. They are documents from the personnel file that counsel showed me this morning pertaining to Peter Rossi.

Q. Doctor, do you rely on Marcus Exhibit 5 and Marcus Exhibit 6 for your opinions in this case?

A. I did not rely on these documents inasmuch as I did not have them when I prepared my calculation. However, they corroborate figures used in my report -- I'm sorry, in my calculation.

Q. Do they provide new information that you did not previously have?

A. They provide -- I did not previously have the annualized pay from 1981. I had the tax return, which was pretty close, but I did not have that so I now have the official pay for that year.

Q. Does Marcus Exhibit 6, that's the sheet

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dated from 1982, does that provide you with any new information?

A. No, it corroborates information that I have assumed to be valid.

Q. Let me draw your attention to the production request, back to Marcus Exhibit 2. If you could look at the first request --

A. Is that number one?

Q. Yes, request number one. If you could read it, I don't think it's necessary to read it into the record, do you have any documents or other materials that would be responsive to that request other than what you have produced so far?

A. All the documents that were specifically utilized and relied upon for the preparation of my opinion were submitted.

Q. So you don't have any correspondence to or from anyone in connection with this case that was not produced?

A. No, that's not so. I do have correspondence with counsel that was not produced but that is not really -- I don't see it as belonging to number one, as falling under number one.

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MS. WALTERS: He didn't rely on that correspondence for his opinions in this case. That's why --

MR. GARNICK: Thank you for that testimony.

MS. WALTERS: That's why --

MR. GARNICK: That was, in fact, my next question.

Q. Did you rely upon that correspondence in connection with your opinions in this case?

A. No, I did not.

Q. Do you have any drafts or work papers that you have not produced that you rely upon or that you prepared in connection with your opinion in this case?

A. No.

Q. Are there any government publications, statistical tables that you rely upon that you have not produced in connection with this case?

A. All materials that were specifically utilized for the preparation of this report were produced. There are none that have not, as far as I can recall.

Q. Let's go to request number two, if you

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could review that for me, and my question is do you have anything other than what has been produced here today that is responsive to this request?

A. I have everything except that I also had deposition transcripts, a whole big pile of them that I didn't bring with me. The summaries are here. I just didn't carry them with me and they have not been marked in any way, shape or form, so I don't have them here.

MS. WALTERS: Just so we are clear, we produced our original transcripts.

Q. Are the transcripts that you have in your possession the same transcripts that we have on the table here?

A. That is correct.

Q. You don't have any other transcripts?

A. No.

Q. And as you said, you didn't make any markings of any sort on any of the pages of the transcripts?

A. Absolutely correct.

Q. Let's go to the next one, if you could read that, and I have the same question. Do you have anything responsive to this request that you

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have not produced today?

A. I do not keep any transcripts and do not have any with me here.

Q. You do not have a single transcript reflecting your court testimony in any case?

A. That's correct.

Q. Do you have any affidavits or any sworn statements of any sort?

A. Affidavits?

Q. Affidavits.

A. I can't think of any affidavits.

Q. Did you search your files in response to request number three?

A. The discussion I had with Miss Walters was whether I had any transcripts of any past testimony and it's my policy not to keep those. I hardly ever get them and do not keep them.

Q. Did she ask you about affidavits?

A. The term "affidavit" did not come up specifically.

Q. Sitting here today, do you know one way or the other whether you have any affidavits or other kinds of sworn statement in your files?

A. As I sit here, I cannot think of a

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sworn affidavit before a court or any other sworn testimony before a court.

Q. But you may have such affidavits? You haven't searched. Is that correct?

A. I don't usually provide affidavits. The usual practice for me is to appear in court and provide testimony.

Q. I understand you don't usually provide an affidavit but my question is whether you have searched for any affidavit in your files that may be responsive to this request?

A. I have not specifically searched. I can tell you that as I sit here, I can't think of an affidavit that I prepared other than even in this case, I don't think I have signed an affidavit. So the answer is no, I have not specifically searched for an affidavit that has been submitted to a court but the second part of it is I don't think I have any.

Q. Let's go to the fourth request, if you can review those. First I want to ask you have you participated in any conferences or seminars relating to the computation of damages in a personal injury lawsuit?

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A. Let me correct my answer to number three.

Q. Okay.

A. I have given the answer as I have given it and kept saying court and I want to emphasize this is the case. I do have reports submitted to regulatory commissions that was not my understanding -- on public utility matters. As the question was relayed to me when I heard of talk to me about it and as I answered it here, I have been thinking about the courts but to be absolutely clear, I want to say to you that I have copies of reports, of some of them that have been submitted to public utility commissions in various states.

Q. These reports, are they sworn statements or affidavits?

A. The way it works, they are usually filed four or six weeks before the hearing is held. I then will appear and at that point, I will be sworn and adopt the testimony. So in fact, they are not the -- the way I have them, they are not sworn reports or affidavits. I would usually be sworn at the time and counsel will ask me if we were to ask you all the questions that are in your

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report, would your answers be the same and I would say yes.

Q. Let's go on to request number four. Have you participated in seminars or conferences relating to the computation of damages in a personal injury lawsuit?

A. I have.

Q. And what form did that participation take?

A. I have been in two programs organized by the Institute of Continuing Legal Education and in connection with those programs, I have submitted reports. There were two programs for two different reports, two different points in time and they have been provided.

Q. And you have only been involved in two such seminars?

A. I have been involved in two. One of the two seminars ran two sessions so the same paper was used in both but I have been involved only in two.

Q. What do you do in the seminars?

A. In those particular seminars?

Q. Yes.

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A. In those seminars, I was only one of the participants. My role was I would be -- my testimony, which had been distributed to the participants, would then be introduced through direct testimony and I would then be cross-examined on it by another attorney.

Q. So it would be some kind of part of a mock trial?

A. That's a fair way to put it.

Q. It would be a demonstration of your testimony to the viewers at the seminar? Is that correct?

A. The end result would be a demonstration but the purposes were to show what economic testimony is and what are the issues and how it's presented and how it's cross-examined.

Q. Who attended these seminars?

A. In New Jersey, as I understand it, the Institute of Continuing Legal Education is sponsored by the New Jersey Bar Association and it's an educational program. Students -- attorneys participate and they may be receiving some credit towards various ongoing programs.

Q. When do the seminars occur?

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A. When did they occur?

Q. When did they occur?

A. I think -- I don't recall the dates but there may be a date on each of the covers.

Q. I'm going to show them to you. This is part of Marcus Exhibit 3. Can you tell me, based on those papers, when the seminars occurred?

A. One of them is clear, one is dated April 29, 1989, and I assume that was the date but I can't even tell you that. I don't know when they occurred. I will tell you the '89 had to occur sometime in '89 or later because of these sources that are presented in it. The other one, probably a couple of years earlier.

Q. So the last time you participated in one of these conferences you think was in 1989?

A. That is my reconstruction of the dates based on what I have just explained.

Q. You didn't participate in one of these conferences this year?

A. No.

Q. Are you paid for your participation?

A. I was not paid.

Q. Why do you agree to participate in

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these conferences?

A. I think there are various reasons for it. One, I'm usually approached by my people who I suppose are held in some respect by their profession; two, I'm aware that there is some instructional value to my participation; three, I expect to generate good will as a consequence of this participation.

Q. Anything else?

A. Good will, of course, also extends, I want to make sure that I'm not hiding behind a word here, it extends to hopefully, I will also be better known by some people and if it generates some additional assignments that are consistent with what I want to do, that's nice, too.

Q. And do you prepare any papers or notes in connection with these seminars or conferences?

A. I may have had some papers just before presenting it but I can't recall, as I sit here, whether there was anything else.

Q. As you sit here, do you know if you have retained any lectures or notes or any kind of work papers in connection with the seminars or conferences?

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A. I really don't know.

Q. Have you searched for any in response to request number four?

A. I did not search. My request, the request I was given was to provide the copies of the studies and I can tell you that if there are notes, they would be -- these are very complete reports but I can't tell you that I searched to see whether there may have been worksheets behind this report. These reports are intended to be complete because they are distributed to the participants so they can have as much understanding as possible and if you go through them, I would venture to say that they are rather detailed. But I have not searched for that.

Q. Doctor, I think you said that it's your policy not to retain transcripts of testimony that you have given or depositions that you have given. Is that --

A. That's correct.

Q. Can you tell me the reason for your policy?

A. Number one, I do not get, I never get -- I shouldn't say never. I don't recall ever

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getting a transcript of trial testimony. I am deposed in a fraction of cases and I hardly ever get it, the copy of my deposition. If I will get it, I will get it before trial to review it, it will be a couple of days before, if I get it, sometimes I don't get it, and I will take it and I will review it and dispose of it with the trial file. There is just no point for me keeping it, since I have testified. So the bottom line is that I don't have it and I hardly ever get them.

Q. Doctor, you are aware at the end of this deposition, you are entitled to get a copy and to review it for accuracy?

A. I was not aware of it.

Q. You have never been aware of that?

A. I have never been told up until today that I'm entitled to receive a copy of my deposition.

Q. Doctor, let me be the first to tell you that when the transcript is prepared, you have a right to review it and to make corrections if you think that it has been transcribed inaccurately. And you have a right, I think, in every case.

A. I have learned it for the first time

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today.

Q. Doctor, do you have any transcripts of depositions that you may have currently in open cases that have yet to go to trial?

A. No.

Q. Are you certain about that?

A. I cannot tell you that I'm certain a hundred percent of that. I would normally -- I told you I don't have a policy of keeping them and I would normally know if I have something that is awaiting trial. It is -- but I cannot tell you that I'm certain.

Q. Did you search your files to see if there might be a deposition or two?

A. I did not do a physical search and I am relying on my knowledge of what normally happens in my office. So based on that, my answer is that I don't have any. But I can't add to that question. There was a case that was settled and I'm just trying to think when we settled, we throw it away but -- I know it was settled just awhile ago. So my answer is I can't recall a particular transcript of a deposition that I have.

Q. Did you ever have a case in which you

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Marcus - direct

gave testimony at trial and it went to a verdict and the verdict was appealed and then the case was remanded for a new trial?

A. I think I recall such a thing some years ago.

Q. In those cases, do you retain transcripts?

A. No.

Q. So for the retrial, you give your testimony for a second time without the benefit of the transcript?

A. I can tell you that when it happens, the attorney has to produce -- he will have to produce all the original documents because I will not keep a file once it has been tried. He will have to tell me keep it for appeal, which he doesn't do, or he will have to reproduce whatever is needed for the new trial, including the transcript.

Q. This is another policy that you have?

A. That will happen. It's unavoidable.

Q. That you don't keep the file?

A. I do not keep the file.

Q. What is the reason for this policy?

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A. There is no reason to keep them.

Q. Doctor, for purposes of your opinions in this case, do you rely upon all of the materials that were produced in response to the subpoena?

A. I don't understand the question.

Q. Certain materials were produced in response to the subpoena, correct?

A. Yes.

Q. My question is do you rely upon them all? Is there anything that you do not rely upon?

A. I can't answer the question.

Q. Why not?

A. Because I have reviewed a lot of the materials. I'm saying a lot because some of the transcript pages I did not read if they had to do with the cigarette tobacco issues and medical, it was none of my concern, so I can't say to you I read everything. And I have reviewed tax returns that were provided to me and they provided me with assumptions needed to produce the report. I can't pull for you a page which I didn't use. What I can do, to be absolutely responsive to your question, I can go through each of my assumptions and tell you where it came from, at least one source where it

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came from. But I'm unable to tell you which parts of this voluminous material was not used.

Q. Doctor, let me go back a little bit. Did you read the transcripts, the deposition transcripts?

A. Did I read them from cover to cover?

Q. Did you read them from cover to cover?

A. Each page and every line?

Q. Each page and every line.

A. I want to be clear. No.

Q. Did you read part of the transcripts?

A. I did.

Q. Did you read part of every transcript?

A. Part of every transcript?

Q. Part of every transcript.

A. Yes.

Q. So there is no transcript that you did not read any of?

A. That's correct.

Q. Can you tell me what parts of these transcripts you read?

A. No, I can't tell you that.

Q. Why can't you tell me that?

A. The purpose of -- because the purpose

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of my reading the transcript was limited. It was, and maybe I can tell you what it was and then it will become clear why I can't tell you specifically which parts I read, with respect -- let's look at it this way: With respect to his employer, I read it, I read -- I was guided by the summary and then I went to the transcript and pretty much read, I would say read most of it. There were sections there, too, about very personal matters, I had little interest or skimmed through it. But the purpose of my reading the employer's testimony was very limited, it was just to be satisfied that he was -- that other information that I got from counsel in response to the questionnaire was generally valid, namely that he was a competent employee, productive and with potential for promotion and growth. That was the only purpose. Once I satisfied myself that there is something for that, I did not bother to detail that information and to make sure that all elements are there.

With respect to the children, and that also applies with respect to the wife but mostly with respect to the children, my purpose was just to be satisfied that there is a basis for a loss of

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companionship, guidance and advice but not to try and get it into a form that would be sufficient for me to develop a valuation. So once I saw the way they spoke about him and the way they described the relationship, I was satisfied that there is a basis for a loss of companionship, guidance and advice and that was it. I wasn't interested in the details of this relationship since I was not going to place a value on it.

So to sum up, in order to value the things that I have done in my report, the hard core numbers, which is loss of earnings, the primary information comes from the tax returns and supported in a qualitative way by the employer and with respect to physical household services, there was a letter that was supplied to me from the wife which was the foundation and again, I was not interested in documenting the precise duties that he had and the precise hours for all kinds of reasons so again, I had a very limited interest in reviewing the transcripts and as a result of it, I cannot tell you which portions specifically I read and which portions I did not read.

Q. Let me back up a little bit. So am I

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correct, then, in my understanding that you used summaries provided to you by Plaintiff's counsel as a guide as to what was in the depositions?

A. Yes.

Q. And if there was some important information in the depositions that did not appear in the summaries, you would not know it?

A. There is an assumption in your question and I want to just make sure that it's understood.

Q. Please.

A. The important -- I already said to you that for my purposes, I did not qualitatively use any of the information. That is, once I was satisfied that he was a valuable employee, I relied on tax returns and on general economic assumptions. Once I was satisfied that he provided physical services around the house, I didn't rely on what specifically he did, so there could not have been particularly so-called important information for me that I did not use.

Q. Doctor, just speaking hypothetically, let us say that the wife testified, and I'm not saying this is in there, I just want to get an idea of where you are coming out on all of this, let's

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say the wife testified that for years, Peter Rossi said that he would retire as soon as he hit age 60 and that's when he was going to retire. And if that information did not appear in the summary, you would not know it. Is that correct?

MS. WALTERS: This is an improper hypothetical. This is not a fact in the case.

MR. GARNICK: That's fine.

MS. WALTERS: I'm objecting to the form of the question.

Q. Can you answer the question, please?

A. If she had said that he would retire at age 60, although I remember references to retirement at age 65, so that would have contradicted it, but you are saying to me suppose there was a contradiction?

Q. Right, or there is some clearly relevant material in there that did not show up in the summaries.

A. Number one, I have -- in regard to this specific question, retirement age, I had an assumption given to me that he intended to retire at age 65. I have accepted that assumption but I did not exclusively rely on it. In fact, I relied

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on work life, which also happens to be age 65. The work life statistic is an objective statistic for all people of that age and for that reason, the age 65, I don't know what I would have done if I had seen a contradiction. I was given an assumption and I checked it against work life tables and if he had said someplace that he had intended to retire at age 60, I wouldn't have known that but again, I don't know if it would have made a difference.

Q. We will get to work life. Let me rephrase my question. It's very simple. If there was some information that pertained to your opinion in this case in the depositions but did not appear on the summaries provided to you by Miss Walters, you would not know it, would you?

A. Unless I stumbled into it, I may not know it.

Q. Did you read the entire --

MS. WALTERS: Wait, I have the same objection because I don't think your question is proper. It's worded as a hypothetical, unless you have a good faith basis for showing that there is such a piece of information in one of those transcripts. Are you stipulating that there is or

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stating that there is?

MR. GARNICK: I'm not stipulating it one way or the other.

MS. WALTERS: So the hypothetical is improper.

MR. GARNICK: And your objection is in the record.

MS. WALTERS: Thank you.

Q. Doctor, did you read the entire summaries provided to you by Ms. Walters?

A. I did.

Q. Doctor, did you make any notes in the course of reviewing the summaries and the depositions in this case?

A. No.

Q. Why not?

A. Because the purpose of my reading the deposition was very limited and I did not intend to use specific facts from the deposition. I did not -- there were no specific facts in the deposition that I relied on. If I had relied on those, I would have had to make a note of where they are. I did not. I used it in the way that I have described before.

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Q. So that if the depositions were never provided to you and if the summaries were never provided to you, your opinions today would be the same. Is that correct?

A. Let me answer it fully.

Q. Please.

A. The earnings loss calculation would be the same because I relied on earnings data and age and trends that were not -- were provided elsewhere. I would not have known that he was a valuable employee but the answer, the result would have been the same because I have used a conservative assumption. I have not factored in promotion, I have not factored in any possibility for higher recognition of this employee.

With respect to the physical household services, I have relied on the letter from the wife, which was not -- stands by itself, as far as I'm concerned, which refers to services around the house. I would have used -- that would have been sufficient for me to come up with a value that I have done. So for all intents and purposes, the answer is that the substance of my analysis, the numbers themselves would have been the same based

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on what I have just explained to you and I guess that completes my answer.

Q. If you had read the depositions of the children and the wife more carefully, would you have sufficient information, do you think, to come up with a calculation for loss of guidance, advice and those kinds of services?

MS. WALTERS: I object to the form of the question.

THE WITNESS: May I hear the question again, please.

Q. Let me restate it. If you had read the depositions of the three children and of Carolyn Rossi carefully, page by page, cover to cover, do you think that you would have been in a position to quantify the loss of companionship and advice in this case?

A. I can't answer that question.

Q. Why not?

A. Because I have not read it line by line, page by page.

Q. Did you ever discuss with Ms. Walters whether or not you should make notes of the summaries or depositions she provided to you in

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this case?

A. No.

Q. When were you first contacted in connection with this case?

A. My records show that I received the package of materials on March 1, '91. It is possible that I was called a few days before to tell me that something would be coming in the mail.

Q. Do you recall whether you were?

A. I'm inclined to say that -- I don't recall so maybe -- my impression I was. I can't tell you I'm certain. I would say it's probable.

Q. Do you have an impression as to who might have called you?

A. Yes, Miss Walters.

Q. Do you have an impression as to what the substance of that conversation was?

A. The substance would be we want you to look into an economic loss case. We are sending you materials.

Q. Do you recall what those materials were?

A. Yes, I think it was this file and transcripts.

MR. GARNICK: Let me mark for

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identification purposes what purports to be the data questionnaire from your office that was filled in in connection with this case. I guess that's Marcus Exhibit 7.

MS. WALTERS: Off the record.

(Whereupon a discussion took place off the record.)

MR. GARNICK: Let's mark, also, the -- let's get that marked. Seven is the form and eight will be the letter from Ms. Rossi dated December 2, 1985.

(Whereupon the documents were received and marked Marcus 7 and Marcus 8 for identification.)

BY MR. GARNICK:

Q. Doctor, I hand you what has been marked as Marcus Exhibit No. 7. Was that document among the materials you received in your first package --

A. Yes.

Q. -- in connection with this case? Doctor, I notice in the lower right-hand corner or left-hand corner, there is a parenthetical that says 2/90. Does that have any significance?

A. Yes, it means that this form was

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prepared in February '90.

Q. Does that suggest that you received that form after February 1990?

A. I'm sure that's true.

Q. Also I hand you what has been marked as Marcus Exhibit 8. Doctor, do you remember seeing that before?

A. Yes.

Q. And what is that?

A. It's a letter from Mr. Rossi's wife.

Q. And do you recall when you received that?

A. With the packet.

Q. With the packet. Doctor, addressing this question to the form again, is that the standard form you use in these cases?

A. Yes.

Q. After you received these materials in the mail, what happened then?

A. I answered the question of whether there is likely to be a substantial economic loss and then much later on, I started doing the calculation.

Q. When you say, "substantial," what does

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that mean to your mind?

A. Substantial means -- it's really a subjective term. Certainly anything over $100,000 is substantial.

Q. Is that what you meant?

A. If you ask me as I sit here, when I said substantial, I meant -- I didn't have a particular figure in mind. It's an impressionistic term. If you ask me as I sit here if it had been maybe $40,000 or $50,000, I might not have called it substantial.

Q. Up to March 15, 1991, did you touch pen to paper in connection with this case?

A. No.

Q. And up to that time, all the communication with counsel was orally?

A. On the substance?

Q. On the substance.

A. Yes.

Q. Doctor, when did you first make the actual calculation in this case?

A. The actual calculations were done within the last several weeks.

Q. They were done before September 25th.

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Is that right?

A. Yes.

Q. Did you have a discussion with Ms. Walters as to when you should do the calculations in this case?

A. I knew she wanted them and I kept -- and I knew that they had to be distributed before my deposition but I really didn't get to them until very close to the deadline.

Q. Did you have any discussions with Ms. Walters about the substance of the calculations?

A. No. What do you mean by "substance"?

Q. The actual numbers.

A. When?

Q. At any time up to, let's say, September 25, 1991.

A. No.

Q. How did Ms. Walters get the questionnaire to fill out?

A. I don't know for sure how she got it.

Q. Did you supply it to her?

A. I was going to say the normal practice would have been that she, as I said to you, she probably called me and at that point, I would say

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to her I need information and at that time, it would be the normal practice for me to send her the form. I don't recall specifically doing it but I'm giving you my best judgment on how she got it.

Q. Might she have had it already?

A. I don't know.

Q. Do you provide attorneys with your forms generally, that is to say, outside the context of a specific case?

A. Do you mean -- I don't understand your question.

Q. Do you know if attorneys in New Jersey have files in which they have empty forms of yours?

A. I don't know.

Q. You don't know one way or the other?

A. Look, it's possible that if I send it to a lawyer, before he -- when he has a new case, that he will make a copy and keep it for another case. It's possible he will call me again and ask me to send it. It's not my practice to send forms to a list of lawyers. I don't do that.

Q. Do you recall whether you periodically get forms, filled out forms, without having sent a blank form first?

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A. Yes, it will happen on occasion.

Q. After September 25, 1991, did you have any discussions with Cindy Walters leading up to this deposition?

A. After September --

Q. 25th.

A. -- 25, 1991, I had discussion with her, people in her office about the time they wanted me here. I had met with her this morning before the deposition.

Q. And did that meeting concern your opinion in this case?

MS. WALTERS: I'm going to object to the form of that question. If you mean to ask him whether anything that was said in that meeting this morning he relied upon in terms of his opinions in this case, that would be appropriate. Anything else as to the substance of the conversation would be privileged.

MR. GARNICK: Let's start with that question.

Q. Was there anything said in that meeting that you relied upon for purposes of this case?

A. Nothing that was said this morning

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affected my opinions or changed my opinions.

Q. Did anything corroborate your opinions?

A. Yes.

Q. What was that?

A. I think we already identified the Marcus 5 and 6.

Q. Anything other than Marcus 5 and 6?

A. No.

Q. Have you ever consulted with Ms. Walters or anyone from her law firm in connection with any case?

A. Yes.

Q. Can you tell me in how many cases you have done that?

A. I can try and give you an approximation. I don't recall the exact number.

Q. Please do, sir.

A. I would say around half a dozen times.

Q. Within what time period?

A. Years, maybe four or five years.

Q. Four or five years?

A. Half a dozen to nine, just to be on the safe side, maybe half a dozen to three quarter dozen times, six to nine cases.

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Q. Six to nine. And were these consultations with Ms. Walters or with another attorney?

A. No, this is total for Budd, Larner.

Q. Total for Budd, Larner with various attorneys from Budd, Larner?

A. Yes.

MR. TUCKER: I'm sorry, doctor, would you keep your voice up a little bit.

THE WITNESS: I'm sorry.

MR. GARNICK: Let's take a break.

(Whereupon a recess was taken.)

(A document was received and marked Marcus 9 for identification.)

Q. Dr. Marcus, could you describe your educational background, please?

A. B.A. degree in economics, Ph.D. degree in economics.

Q. Where did you get your B.A. degree?

A. Brooklyn College.

Q. And your Ph.D. at Brown University?

A. Right.

Q. What was the subject matter of your dissertation?

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A. I can't give you the exact title but it had to do with productivity or capital/labor ratio variation and their effect on -- and the relationship to wage rates and industry and their interdependence with productivity.

Q. Could you explain that a little bit more?

A. Can I be honest with you? I had finished my dissertation in 1962. Several articles appeared after in the early sixties, so I have not looked at my dissertation since that time. It had to do with trying to explain why capital intensity, the ratio of capital to labor, varies and the observation points for different industries and states to get enough statistical observations and the thesis attempted to explain what is behind these variations and how they relate to other economic variables. That's as best as I can recall, as best as I can summarize it.

Q. What did you do upon graduation?

A. Graduation from Brown?

Q. Yes.

A. Actually, I left Brown in '62 at the end of the academic year in May or June of '62. I

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came to Rutgers in September of '62. I continued to work on my dissertation for a year and I got my degree in the summer of '63. So I continued at Rutgers although I had come there before.

Q. What was your position at Rutgers while you were working on your dissertation?

A. I was a lecturer in economics.

Q. And you taught classes?

A. Yes.

Q. What happened upon receiving your degree in '63?

A. I was promoted to assistant professor of economics.

Q. And have you stayed at Rutgers ever since?

A. Yes.

Q. Are you a tenured professor?

A. Yes.

Q. When did you become a tenured professor?

A. Approximately around -- oh, no, around 1965, '66, maybe, '65; '65, '66.

Q. Are you currently a full-time faculty member at Rutgers?

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A. Yes.

Q. Do you currently teach any courses?

A. Yes.

Q. What courses do you teach?

A. I teach money and banking.

Q. What is money about?

A. Money about?

Q. What is the course?

MS. WALTERS: I think the whole course is called money and banking?

Q. Oh, is the whole course called -- I thought it was a separate course on money and a separate course on banking?

A. No, the course is money, banking and financial institutions, capital market.

Q. Is it a graduate course or undergraduate course?

A. It is an undergraduate course.

Q. Do you currently teach graduate courses?

A. No.

Q. Are you now supervising or reviewing any dissertations?

A. No.

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Q. Doctor, does that course involve making future economic projections?

A. I don't understand the question.

Q. Do you teach in that course how to make future economic projections about unemployment?

A. No.

Q. Do you teach in that course how to make future economic projections about interest rates?

A. How to make?

Q. How to make.

A. The issue of future interest rates comes up and the determinants of changes in interest rates is part of what is taught. However, I do not teach them you take A plus B plus C plus D and you come up with a projected interest rate. Let me try it again.

In the course money and banking, we talk about interest rates and we talk about variations in interest rates and the factors behind variations in interest rates. These factors are used and can be used in projection. However, I do not specifically teach them the methodology in terms of sequential steps of how to make projection in interest rates.

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Q. Do you teach them methodology about how to make future economic projections about inflation or disability?

A. The inflation subject comes up in a similar way that I described interest rates. Disability does not come up in that course.

Q. Doctor, what courses have you taught in the past other than money and banking?

A. I taught many courses. I have been at Rutgers now approximately what, almost 30 years, 29 years, and I have taught a wide range of courses. I have taught theory courses at the undergraduate and at the graduate level; I have taught industrial organization; I have taught introductory economics; I have taught macroeconomics; I have taught investment analysis; finance, that is, corporate finance as well as investment analysis; and there may be other courses I don't remember but I think I have given you those that I have taught probably several times each.

Q. Have you ever taught the methodology of making a future economic projection about unemployment?

A. Assuming that there is a course that

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teaches that.

Q. In any course, have you taught -- I don't know if there is a course that teaches it or not but in any course, have you taught the methodology of making future economic projections involving unemployment?

A. Involving unemployment?

Q. Unemployment.

A. About unemployment?

Q. About, future economic projections of unemployment.

A. I have not taught the methodology of making future projections about unemployment. It would be too detailed an area to be taught in a course within the economics department. It would be too technical and too specific, given the scope of liberal arts education.

Q. I want to ask the same question about interest rates and inflation. Would the answer be any different?

A. I think when it comes to interest rates and inflation, we come closer to teaching it because these are such important issues in economics. So when we talk about theory, we talk

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about factors that can be used to project. So we come closer to teaching how to make it although I can't tell you that any of my courses, I set it as an objective to tell them how to make specific projections in particular situations about these things.

Q. Are you currently engaging in any research in economics?

A. What do you mean by "research"?

Q. Doctor, you from time to time publish original papers, do you not?

A. Yes.

Q. And aren't some of those papers based upon economic research that you conduct?

A. Yes. I just wanted to make sure I understand your question.

Q. Can you describe that research, please?

A. There are a number of areas in which I'm working and which are of interest to me. In the area of finance, I'm interested in the relative performance of investment vehicles, in particular such vehicles as mutual funds and their relationship to a variety of characteristics of funds and the economy. In the area of economic

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loss valuations, I am working on the appropriate conceptual measurement of the discount rate and empirical estimation of that as it relates to the theoretical issue in which I'm interested in that area. At the moment, these are the two areas in which I'm particularly interested.

Q. Doctor, could you tell me a little bit more about the second area. What do you mean by approximate conceptual measure of the discount rate?

A. I think the discount rate, which is used, as you know, in valuations in general in finance as well as in economic loss studies, has a number of issues that I think have not been -- at least I don't think have been adequately described or explained as yet. In particular, there is the issue of, I will give you a few that I'm trying to get into, the issue of transaction costs as it affects the discount rate, the literature is just not dealing with that.

MS. PATTERSON: Excuse me, doctor, we are losing something.

THE WITNESS: I'm sorry. My voice is getting -- please remind me.

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A. The transaction costs of investment has not been considered in the literature on discount rates and in valuation. The other area that has not been clearly integrated as yet is how to deal with reinvested, with returns on the -- the reinvested interest rate, the reinvested income on the return, how to deal with the rate that can be expected on that. That's another area on the discount rate.

Q. Doctor, do either of these two areas of research require you to make specific economic projections concerning interest rates?

A. When we talk about the return on reinvested funds, the whole issue is what is going to be the future interest rate. So that is an issue that has to be dealt with. The transaction cost issue does not require projections.

Q. With respect to the reinvested income, does your research require you actually to make specific projections of future interest rates?

A. I have not gotten to the point of making specific projections, no.

Q. Doctor, I know you conducted various kinds of research in the past. I was hoping you

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Marcus - direct

could give me a brief overview of the research that you have conducted.

A. I will not be able to do that from memory. I have -- I would need to have the full list of my publications, which I don't think is part of my resume.

Q. Let me hand you what I think is a copy of your resume. It has been marked as Marcus Exhibit 9. Let me first ask you if that's a current copy?

A. Yes.

Q. And when was that copy prepared?

A. I don't know.

Q. How often do you usually revise your resume?

A. There is no specific frequency.

Q. Do you have a more detailed copy of your resume?

A. What I have is the publications that you see there, I have a list of the specific articles and the titles, and their titles, dates and a full -- and the precise identification of the journal. It's a bibliographic list, which is not part of this resume.

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Q. And was that produced in this case?

A. No, I don't believe it was requested or produced.

Q. Doctor, looking down the list of publications in economics and finance, does this refresh your recollection at all about any of your prior research?

A. In some cases, it does; in some cases, it doesn't. I can give you some -- an overview but I can't give you in every case what the article was about; not in every case, maybe in some of them I can.

Q. Why don't you give me what you can.

A. Are you waiting for me?

Q. Yes. Can you tell me what you do recall based on this list, please?

A. Let me put it to you differently. Some articles dealt with what we call behavioral firm. It dealt with mortality of firms, what makes a firm go out of business, profitability of firms, productivity issues relating to firms. Then some articles dealt with financial issues, valuation of stocks as they relate to taxation, valuation of stocks as they relate to the cost of issuance of

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the stocks and underwriting practices. Then there were articles dealing with I guess things that don't fit in neatly. There was an article that dealt with principles that would determine rental on business properties in a particular industry, economic issues that relate to that; an article that related to, something that dealt with social insurance of housing as it pertained to particular social problems, I think that was the article in Land Economics or the Journal of the American Institute of Planners. I think I have given you the areas in a very broad way as I sit here.

Q. With respect to any of the research that you have done, have you ever had occasion to make specific economic projections about interest rates?

A. No. My publications were more theoretical in nature.

Q. Have you ever had occasion to make specific, in connection with this research, specific economic projections about inflation or unemployment?

A. I give the same answer. My articles were, to the extent that they dealt with inflation,

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Marcus - direct

it was more the effect of inflation in a qualitative way rather than specific projections.

Q. Doctor, can you tell me what your last original article was that was published in a peer review journal? And by original article, I don't mean book report or letter or comment, I mean article.

A. Book report is not an article, I agree with you. I would have to look it up. My recollection is that I had an article come out in '89.

Q. Do you recall what journal that would be in?

A. That would be the International Journal of Finance.

Q. Do you recall what that was about?

A. It had to do with stock valuation issues.

Q. Let's talk a little bit about your consulting work. Do you consult in connection with some kind of organization or firm?

A. Your question is am I part of an organization?

Q. It's a little broader than that. Do

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you consult in connection, are you affiliated or somehow associated with a consulting firm or organization?

A. No.

Q. So the consulting that you do you do on your own?

A. Correct.

Q. When you consult on a case, do you have any assistance from anyone other than the parties?

A. Yes.

Q. And who would that be?

A. I have an employee, an associate or assistant, he has no clear title, who works with me.

Q. And who is he or she?

A. It's a he. His name is Ken Betz, B-e-t-z.

Q. And is that a full-time position for him?

A. Yes.

Q. What is his educational background?

A. He has an MBA in finance.

Q. Do you know from where?

A. I believe it's Fairleigh Dickinson.

Q. How long has he worked for you?

A. More than five years. I can't remember

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the exact date but it would be more than five years.

Q. Do you recall what he did before coming to work for you?

A. I think he came to me after he got his MBA, just from school.

Q. And what does he do?

A. He assists me in the following ways: He will bring data sources to me at my request; he will make calculations under my instruction and supervision; he will do the physical production of the report, will see to it that things are what they are; he will proofread the report in addition to whatever checking I do; and everything he does is under my direction and supervision. He does not do the writing of the reports, he does not develop a methodology and he is limited to the kind of assistance that I described.

Q. I think the first one was that he brings data sources to you. What kind of instruction do you give him in connection with that?

A. I may tell him look up employment and earnings and see what we have for such and such category, such and such years; let's look at --

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look up the New Jersey Department of Labor, see what statistics we have in such and such occupation; go to a work life table and get me the calculation, get me the work life expectancy for a man who was born on such and such a date; go and make a present value calculation and I want you to use a growth rate of five percent and discount rate of seven percent or whatever it may be and give me the present value interest factor and show it to me. It's these kind of things that he will do.

Q. Do you tell him what source to look at or do you just usually give him a subject matter?

A. I tell him the source.

Q. You identify the source?

A. Yes.

Q. When you say that he sometimes makes the calculation, you mean he just follows the steps that you have outlined and does the physical calculation?

A. Absolutely.

Q. You said he doesn't write the report but that he physically produces the report?

A. He will see to it -- I will write it, he will make sure that the exhibit that I want to

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be there is going to be there and that it's being typed and that it's being sent out and it's being put back in my file. He does the detailed work after I develop a methodology and tell him exactly what to do. He does the calculation assistance.

Q. Doctor, I'm interested in your usual procedure. If I would come to you with a case and asked you to render an opinion in a case, what would you say? What would be the first thing that we would do?

A. I think we went over it to some extent already. I would give you a data form. You supply me with documents, that will be the beginning.

Q. Would you usually conduct any interviews?

A. Usually, no.

Q. Would you sometimes?

A. Yes.

Q. Under what circumstances?

A. After you give me the information, if there are things that aren't clear, information that is missing, it really depends on the situation.

Q. So missing information, you would ask

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for interviews. Are there any others?

A. If I feel that explanations are needed, if there is a big turnover in the history. Look, because it's not normal, because it's not the usual practice, I can't give you exactly the grounds when I will hold an interview. I will tell you that in the majority of cases, I don't interview.

Q. How much do you --

A. In the vast majority, I don't interview.

Q. How much do you usually charge?

A. I charge for reports of this nature about $900.

Q. Do you usually charge for deposition time?

A. Yes.

Q. How much do you usually charge for that?

A. I charge for deposition time, this time I charged $275 an hour. It was $250 an hour. However, I also alternatively, in many cases, if it is a short term deposition and we know it's going to be short term, it could be a flat fee of $800 if it's under half a day.

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Q. And what about for trial testimony?

A. Trial testimony, there is a flat fee of $700 per appearance.

Q. Does that include preparation?

A. No.

Q. So there is an additional charge for preparation. How much is that?

A. In the usual case, the average preparation charge would be $200.

Q. Doctor, aside from personal injury cases in which you give economic loss reports, what kind of consulting do you do?

A. Aside from the whole area of negligence?

Q. Aside from the whole area of calculating economic loss reports.

A. I would say that virtually my entire consulting is related to loss valuations of the type that I have provided here.

Q. Has that been the case historically? Has it been the case within the last five years?

A. That the majority would be from that?

Q. Yes.

A. Yes.

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Q. That the vast majority would be from that?

A. Yes.

Q. Doctor, when did you start doing economic loss reports?

A. Around '78.

Q. And why did you start?

A. I think somebody -- I can't remember exactly whether a colleague came to me and said to me that he has been approached by somebody or I have been approached by an attorney. I remember there was another colleague involved in the development of it who really kind of focused my attention on these issues at the time. But whether that was the first step or whether I was approached by somebody and then I went to him, I can't tell you. It was an uneventful birth of the business.

Q. And that's what you consider it today, it's a business?

A. You can quibble about words. It's obviously consulting, it obviously can be looked at as, since it generates income, it's also -- it has business aspects to it but I'm in it because my area of work has been in finance for many years and

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valuations is in that area and it combines both academic interest and consulting opportunities.

Q. How many economic loss reports do you think you have prepared within the last year?

A. My office will have -- I will give you an estimate. In a year, I would say to you maybe anywhere from 10 to 20 a month, as a rough average, which if I analyze it, you come up with a couple of hundred, around that number.

Q. And would that be true for every year within the last five years?

A. I think as you go a little earlier, it might be a little bit less but it certainly would be true for the last couple of years.

Q. How many would you estimate you worked on over your entire career since 1978?

A. The earlier years, I did far fewer and once I got my associate, we were able to start doing more. I can't tell you, but it would be a large number. It would be obviously in the many hundreds.

Q. Would it be a couple of thousand?

A. A couple of thousand I doubt. I doubt that.

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Q. It would be over a thousand, though?

A. I think it would be over a thousand, yes.

Q. And how many times have you given a deposition in connection with an economic loss report?

A. I will again give you -- I can't give you cumulative, I can try and give you an estimate for the year. I would say it probably runs, depending, sometimes there is bunching and sometimes I will go through months without a deposition. But perhaps one to two would be an average per month, perhaps around a dozen and a half a year.

Q. How many times have you appeared in court in connection with an economic loss report?

A. My general impression, the court and depositions run at about the same frequency. So again, as a general impression, I would give you that range.

Q. Doctor, the great majority of the economic loss reports you prepared have been for plaintiffs. Is that right?

A. I would say 70 to 75 percent would be

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for plaintiffs and the balance would be for defendants.

Q. Of that, how many times have you prepared -- how often have you appeared in court for the plaintiffs?

A. Appearance in court is virtually done at the invitation of plaintiffs. Defendants usually don't call me to court.

Q. What is your current salary at Rutgers?

A. Around $75,000.

Q. Has that changed recently?

A. I think there was -- I think there was a recent change and I'm giving you the new one. I'm not absolutely sure about the level but it should be around that.

Q. Do you recall what it was before the change?

A. Maybe $68,000, maybe $69,000. I don't recall. I know for a couple of years, there was no raise.

Q. How much did you earn from your consulting work over the last year?

A. I am going to give you an estimate. I would say to you that about certainly more than

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half of my total income and maybe two-thirds would be from my consulting, as I consider my total income.

Q. Would you say that the majority of your income comes from consulting for plaintiffs?

A. It certainly comes from the preparation of economic loss reports and that's true.

Q. What about for plaintiffs, if you count only those reports that you did for plaintiffs, is that a majority of your income?

A. More than 50 percent? Probably.

Q. Doctor, do you have any estimate about how much you have earned from your consulting work over the last five years?

A. No.

Q. Do you have any idea since you began in 1978?

A. No.

Q. As an economist, have you ever studied the manufacture of cigarettes or any issue associated with the manufacture of cigarettes?

A. No.

Q. How about the sale of cigarettes or any issue associated with the sale of cigarettes?

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A. No.

Q. Do you currently smoke?

A. No.

Q. Have you ever smoked?

A. No.

Q. Do you belong to any antismoking organizations?

A. No.

Q. Do you have a view as to whether cigarettes should be sold?

A. I haven't thought about this issue.

Q. You don't have a personal opinion either way?

A. I really haven't thought about that. I have no opinion on that.

Q. Have you thought of it as to the role of the market as it might relate to whether cigarettes should be sold?

A. I have no objections to cigarettes being sold.

Q. Doctor, can you define economics for me?

A. What?

Q. Can you define economics for me?

A. Could you give another word to it?

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Economic --

Q. What is the field of economics?

A. Oh, economics?

Q. Yes.

A. I'm sorry, I didn't hear you. I thought you said "economic."

Q. I apologize.

A. Economics, the textbook definition of economics is the study of how society organizes its resources so as to maximize production and distribution of goods and services, how it organizes its production in the most efficient way so as to maximize production and distribution of goods and services.

Q. Is economics an exact science?

A. Economics is considered a social science. It's not a physical science and if you mean by physical -- if you want to call physical sciences exact sciences, then economics is not an exact science.

Q. Future economic projections are uncertain. Isn't that true?

A. I agree. They are made based on probabilities but there is no certainty that the

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projected values will materialize.

Q. In fact, economists don't have a great track record when it comes to making future economic projections, right?

A. I can't -- I haven't summarized the track record of economists. I can't answer that.

Q. I'm sorry, I didn't hear that.

A. I personally have not made a study of the "track record" of economists. I don't know who you are including in the group. I can't comment on it. I would not say it's true or not true. I don't have -- I can't affirm or deny the statement.

Q. As an economist, do you have any impression at all as to the track record of future economic projections made by other economists?

MS. WALTERS: You are not asking him to guess, are you?

MR. GARNICK: I'm asking for his impression as an economist.

MS. WALTERS: Do you want him to guess or do you want to give you a reasoned --

Q. Doctor, I don't want you to guess, I want your impression as an economist.

A. I cannot generalize about the track

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record of economists.

Q. Doctor, would you agree that economists often disagree about future economic projections?

A. If you mean by disagree that somebody would say inflation is going to be four percent, if somebody is going to say it's four and a half and somebody is going to say four and three quarters, or let's say three will say four and a half and one will say four and a quarter and one will say 4.75, I will agree at any point in time, there will be some range of projections and there will be a median or a consensus but there will not be a single -- economists will not come, will not all come with a single projection accurate to the second decimal point.

Q. And in fact, economists would often disagree about methodology in making projections. Is that true?

A. Some methodologies, there could be some disagreement and some, there could be agreement. You are trying to generalize far too broadly.

Q. So sometimes the answer is yes, in some cases?

A. In some issues, there may be

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disagreement and in others, there may not be disagreement.

Q. Is there a generally accepted methodology for making a future economic projection about employment?

A. What do you mean "about employment"?

Q. About the rate of unemployment five or ten years out.

MS. WALTERS: The economy, you mean, or for the individual?

MR. GARNICK: In the economy.

A. You are asking me is there a prescribed single methodology that economists would agree this is the way to do it?

Q. Yes, that's what I'm asking.

A. One single prescribed methodology that says you take A, you add B, you subtract C, et cetera, no, there is no such thing.

Q. Are there a number of competing prescribed methodologies that economists might rely upon in calculating future unemployment in the economy?

A. There could be variations among different practitioners as to what element should

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be emphasized and variations in how they view the future, there could be differences, yes.

Q. Are there differences between economists or are there a certain number of established methodologies out there that you can identify by name?

A. No, there are no, in quotation marks, "methodologies" that you turn to a handbook and they tell you how to do it. Economic forecasts require a judgment because it is a social science and there are a lot of interacting elements. As a result of it, a forecast would normally be developed by an individual or a group of individuals based on explicit assumptions and theory that that individual will think is appropriate.

Q. Would you give the same answer with respect to making a future economic projection about inflation?

A. I will.

Q. And the same answer with respect to interest rates?

A. I will.

Q. When an economist makes a future

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economic projection about interest rates or unemployment five or ten years out, do they often take the form of a range of numbers or a trend or do these projections somehow sometimes take the form of a specific number, like five percent or six percent?

A. And your question is limited specifically to unemployment?

Q. Yes.

A. I can't tell you what -- depending on the problem, depending whether you are projecting it for the economy as a whole, whether you are projecting it for an individual, depends on the period that you are going out and depends on the belief of the practitioner. There is no set way of doing it. There is no single methodology that we teach this is the way to do it.

Q. Would you agree that the more specific a projection is, the greater is the likelihood that it will turn out to be inaccurate?

A. As against what?

Q. As against a range or general trend.

A. Sure. If I would say to you unemployment is going to be between zero and 100

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percent, I will always be right. And if I'm going to tell you it's going to be four percent, I sometimes will be wrong. So in that respect, a range can be made to be more accurate; less useful but more accurate if you construct it that way.

Q. And the same is true about inflation and interest rates. Is that correct?

A. Absolutely.

MR. GARNICK: Let me get this marked as Marcus Exhibit 10.

(Whereupon the document was received and marked Marcus 10 for identification.)

Q. Doctor, can you tell me what you were asked to do in connection with this case?

A. I was asked to calculate the economic loss, of which I calculated two elements, earnings loss and household services loss.

Q. I hand you a document that's been marked as Marcus Exhibit No. 10.

A. Yes.

Q. Does that reflect your calculations in this case?

A. Yes.

Q. According to this document, the total

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pecuniary loss that you calculated is $475,046. Is that right?

A. Subject to the -- it is right but I do want to point out qualifications that I noted on the top of page two.

Q. Doctor, would you consider this an estimate of pecuniary loss?

A. As against what?

Q. As against a statement of certainty that this is exactly what the loss is going to be?

A. Certainty would require that we have all the facts. Only God knows it or after the event, we would have known it but he didn't live so we can never know with certainty. It is an estimate because it's a calculation based on assumptions about the future. So an estimate is the best, most probable projection in the view of the person who prepares it based on economic assumptions that appear to be reasonable. So the bottom line, I would call it an estimate within the context of what I have just said.

Q. But you don't know exactly how much the economic loss will actually be. Is that right?

MS. WALTERS: Will?

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MR. GARNICK: I say "will" because there is some future loss in the future but how much the total economic loss will actually be.

A. Now I'm confused.

MS. WALTERS: I don't understand your question.

A. Total versus what?

Q. I don't want to talk about the individual components of this.

A. I understand. I'm just trying to understand.

Q. Based on the things that you did quantify, that is to say, earnings loss and household services, you do not know sitting here today what the total, total being earnings loss and household services, will actually be?

A. Assuming that we now sit in the year 2003 and look back at everything that has transpired -- I don't understand.

Q. Let me try again. Doctor, sitting here in the year 1991, you do not know what earnings loss for Peter Rossi, resulting from Peter Rossi's death, actually is?

A. The loss is going to occur in the

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future.

Q. What it will actually be?

A. No, I don't know what it will actually be as it will turn out to be over the years had all -- had we let history run its course. I don't have that information. Therefore, I don't know what it will turn out to be ex post.

Q. That's my question. Sitting here, you don't know what it will actually be? I don't understand your confusion.

A. I just, when you say what it will actually be, I want to clarify it you asked me that the reason we don't know it is we are making assumptions about the future by necessity. We are now here trying to estimate, we have to estimate now for the future. By virtue of that, because the future is not known with certainty, I don't know with certainty.

Q. Thank you. Doctor, let's talk about past earnings loss. As I understand, on this chart past earnings loss would be the loss of earnings from May 28, 1982, to October 31, 1991.

A. Yes.

Q. And you estimate it to be, putting

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adjustments to the side for a moment, $638,395. Is that correct?

A. Yes.

Q. How did you make this calculation?

A. It would be a help if I could show you the worksheet, if it's okay with you.

Q. Is this the same worksheet --

A. That I gave you, yes.

Q. -- that's on page three of Marcus Exhibit 10?

A. Yes. Mine is the long one, which was reduced for you.

MR. GARNICK: Can we mark that worksheet? Is there any problem doing that? Let's go ahead and mark it as 11.

(Whereupon the document was received and marked Marcus 11 for identification.)

Q. What is the first thing you did?

A. The whole calculation is based on an assumed 1982 salary at the time of $51,400. From that point on, I raise it at six percent per annum to 10/31/1991 and if you just follow it, you will get a total of $638,395.

Q. Why did you go to October 31, 1991?

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Marcus - direct

A. I always separate the past from the future and in this particular case, I was aware that I'm going to be deposed about this time and about the present so I took 10/31. If the trial occurs considerably later, we will adjust it and it's normally done that way. It's an assumed present date and very close to my date of deposition.

Q. And you had to determine the work life of Peter Rossi. Is that correct?

A. Yes.

Q. And how did you determine that?

A. And that I want to clarify because I didn't find it stated clearly in my notes. I said that work life, that I have calculated the loss to age 65. That takes us to May 15, '92. I have been advised that he had intended to work to age 65. Additionally, my worksheet shows, and you have it there, that I calculated his work life based on statistical tables and that is to age 65.7. So I was satisfied in this case that the assumed retirement age that was given to me by Plaintiff's counsel and to which I saw references in materials is actually somewhat conservative compared with the

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Marcus - direct

statistical probability of retirement for a man of Mr. Rossi's age and Mr. Rossi's education.

Q. What statistical tables did you rely on?

A. There is a Bureau of Labor Statistics -- there is only one work life table and that's the one issued by the Bureau of Labor Statistics. I apologize that there is no reference to it. I can probably call and give you the reference. It is a standard work life table. I think it's Bulletin 2210 but I will supply you with the exact reference to the work life table which shows that his statistical work life was to age 65.7.

Q. You used work life to corroborate what you were told about what Mr. Rossi's intended retirement age was?

A. I used it to corroborate and in this case, to be more conservative because if the tables would show a slightly longer work life, but in this particular case, we have several factors indicating that 65 is reasonable. Number one, we have indication from the plaintiff, we have a work life table that supports it and age 65 is still

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Marcus - direct

considered to be the normal retirement age but as I said, I didn't rely on the notion that it was normal, I relied on the other two grounds.

Q. But you would admit that there is a lot of uncertainty as to when Mr. Rossi would have actually retired?

A. There is uncertainty. He could have retired sooner, he could have retired later and I have given you the most reasonable estimate under the circumstances.

Q. Do you recall where Mr. Rossi worked at the time of his death?

A. Yes. He worked for American Food Labs, which had been taken over, and I can give you the exact name of that.

Q. By Ingredients Technology Corporation?

A. That's correct.

Q. Did you undertake an investigation as to when people at that company usually retire?

A. No.

Q. Would that information have been relevant to your determination of work life?

A. No.

Q. It would not have been relevant at all?

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A. No.

Q. In determining work life in this case, did you take into consideration whether Peter Rossi enjoyed his job?

A. I did not base my retirement age on such considerations.

Q. Did you take into account whether he felt a lot of pressure at work and felt a lot of stress at work?

A. I was aware that there was pressure and stress in the work. I don't consider that to be a factor which should militate against the considerations that I described.

Q. Would these factors play a role in when a person would normally decide to retire?

A. There are a number of issues here. First we are asked, I was asked to make a determination of the loss when he was 55 years old. The ultimate decision of when he is going to retire, how much pressure he has on the job and how much he likes the job, to the extent that they enter, could very well change over the years. Secondly, there are numerous factors that impact on the decision to retire, family considerations,

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income, liking the work, what friends are doing, interest in hobbies, commitment to work. The end result is that unless you had a comprehensive model with all necessary factors which have been proven to be a valid predictive model on individual retirement age, unless you had that, you are better off using statistical probabilities and to selectively take one or two or three factors and say well, wouldn't that affect it, it might. So are 12 other factors left out. So it's in light of these kind of considerations that I believe that it is dangerous to rely solely on factors such as you mentioned.

If the man were -- the other event is the man is dead. So we can't even find out how he perceived the pressure to be, how he perceived the work to be. We are talking about pressure but it's his perception. We don't even have, as far as I'm aware, such a model. Even if you had the model, you would need the parameters for him, you would need to know how they would develop from age 55 as he approaches retirement age.

For all these reasons, certainly in this particular case, I felt that the assumption of

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retirement at age 65 is quite reasonable and probably somewhat conservative when judged against the statistical experience of his cohorts by age and education.

Q. Would an estimate of a work life of 64 be reasonable?

A. For whom, when?

Q. For Peter Rossi.

A. I have no basis to use 64 so it's unreasonable.

Q. So you believe it's unreasonable?

A. Sure. I have no basis for it so it's unreasonable. I don't see a basis. If you show me a basis based on information I have, it's not reasonable.

Q. Doctor, if you assumed that there was testimony in the record that Mr. Rossi was under a lot of stress and pressure at his work, would that give you a basis for saying that a retirement age of 64 is reasonable? Maybe not the most reasonable age, but reasonable, within the range of reasonableness?

A. No. Let me make sure that my answer is complete. Stress and pressure is part and parcel

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of many positions in the American economy. It's not unique. If you look at the man's position, he is a senior vice president, substantial income, sales, it goes with the territory. So pressure is high and so are the rewards. That's point number one.

Point number two, we would need to know how he perceived the pressure and whether -- how much of a negative, if at all a negative factor it was and also we would need to know how this would change as he approaches age 64 under your scenario. So for all of these reasons, I do not think that the information you gave me would justify altering the assumption that I have made.

Q. What about retirement age of 67, would that be unreasonable?

A. To me, I have no basis to use 67 in his case, I have no basis to use 64. Could he have worked to age 67? Yes. Could he possibly have retired at age 64? Yes. But given that uncertainty, I think the estimate that I used is still a reasonable basis.

Q. You also estimated that his salary would increase by six percent per year.

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A. Yes.

Q. Of course, you don't know exactly how much Peter Rossi's salary would have actually gone up a year, do you?

A. No, I don't.

Q. And in making your six percent determination, did you take into account the financial condition of the company?

A. If you mean by your question did I analyze the financial condition of the company before reaching my conclusion, did I make a specific analysis of the company, the answer is no.

Q. Did you look to see what wage increases the company was actually giving its employees? I'm not talking about the industry, I'm talking about the company in which Peter Rossi actually worked.

A. Information that I had for him was that for the years that I had it, in the last year, he got a very substantial -- I believe over the period that I had information for him, and admittedly, it's a limited period, it was in excess of 10 percent per annum. Even though it's a limited period, it is the most recent period so you have a trade-off. It's limited but it's more recent so it

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carries quite a bit of weight. I didn't use that kind of wage increase, I used the wage increase that is applicable to the labor force in that period of time. So I have used, if you will, an average rate of increase which is justified by what was happening in the economy over the period that we are talking about, between '82 and '91.

Q. Why didn't you see what the wage increases were Peter Rossi's company was actually giving its employees from 1982 to 1991? Wouldn't that be a better measure?

A. See, by using an average across the board increase, in effect, I'm saying to you that if his company couldn't match it, he could have gone to the labor force and get it. So if I had used a very high rate, which is higher than the average, I think there would have been some merit. How do we know they wouldn't continue to give him 13 percent per annum, it's so much out of line with the economy. So I feel the use of six percent is reasonable because you are really interested in measuring his earning capacity, the loss of earning capacity, and to the extent that that's the going rate, that's the going increase, I think that we

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cannot -- we do not, therefore, distort or overstate the loss that we calculate under this method.

Q. Let me see if I understand this. You are assuming that if he did not obtain a six percent increase in wage from 1982 to 1991, he would have switched jobs and have gotten it at his new job? That's your assumption?

A. I can understand why you are saying that and let me restate it. It's not exactly, so may I explain it?

Q. Please.

A. First I would say to you that nothing that I read in the deposition of his supervisor suggested that he would not have expected to go up. In fact, there are some references that it could have gone up to $75,000 and normally -- and that would have represented about a 50 percent increase presumably in a few short years because that's usually the horizon of executives when they give you this kind of position. So I don't want to suggest that there was anything in the deposition which would have raised doubts in my mind about the company's ability to give him increases, in

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particular since he was considered a valuable employee.

I have not specifically asked the company what would have been the raise. In part, he is the head -- in part because having seen the background of this company and his being there for a long period of time, his raises, I felt a six percent increase is really a measure of the minimum he would be expected to receive. If you say to me do you know for sure that they could pay him that now, I don't have information on that. But then when I fall back and say to you that by using average increases for the economy, a person is not limited to just what his company is going to pay him. He is limited to that if he has no alternative, if he has no skills, if he is not a good employee. But in a dynamic, comparative economy like ours, the assumption of six percent across the board for him for that period of time I think is a safe assumption.

Q. Doctor, I'm not very clear about what exactly are the assumptions that you are relying on for the six percent. Let me take a step back. Would it have been relevant to your analysis for

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you to have investigated the raises that Peter Rossi's company actually gave its employees from 1982 to 1991?

A. Look, in retrospect, I would like to know that, okay? So I would say to you if we can find out, that would be -- because it could be that it was 10 or 15 percent per annum. Maybe that's what they would have given him. I think that if it turned out to be less than six percent, again, I don't want to speculate at this point but I would say to you that in the final analysis, you are talking here about the loss of earning capacity. You are not talking only about the loss of earnings from a specific employer. Employers change identity, employees on occasion get laid off and get a better job. So the issue here is not can I tell you that he would have exactly in that position gotten six percent. Since he was there for a long time, I talk in terms of him staying there and getting six percent.

But if -- look, if the company had gone out of business between '82 and the present, would that have ended the loss? He would have gotten another job and for people, a person with his

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degrees, with his experience, I think the salary we are talking about is a reasonable one. He is a commodity. So I would say to you, again, now I would be curious to know what they actually gave only because I have curiosity about that. But in terms of the economic loss, I don't think his loss is limited by the most adversarial developments that could have happened to him in that company.

Q. I'm not suggesting that but his losses, essentially what you are trying to determine, as I understand it, is how much he would have made if he would have lived. That's the ultimate issue?

A. That's correct.

Q. So his earning capacity might be relevant but that's not determinative, that might be a factor if you assume he would have gone elsewhere if he was not making his earning capacity at his present job?

MS. WALTERS: I object to the form. Do you understand that question?

THE WITNESS: No.

MS. WALTERS: Is that a question or a speech?

MR. GARNICK: It was meant to be a

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question.

MS. WALTERS: I don't understand it. And he said he didn't, so try again.

Q. Doctor, can you tell me why you didn't understand it?

A. No, I can't tell you why I didn't understand it.

Q. Can you tell me, then, why earning capacity is relevant to how much he would have made if he had lived?

A. Because -- I gave you the best example of it. The American economy is a very competitive, dynamic economy. Companies come in, go out, consolidate. People change jobs for better jobs, get laid off. Therefore, by using a conservative estimate for wage growth, I'm pretty much saying to you that -- I'm saying two things. Number one, I would be surprised when the data are in if we get information that he would not have gotten at least six percent per annum. In fact, we have a statement from his employer that his pay would have gone up to $75,000, probably.

Q. Is that what his employer said, that his pay would have gone up?

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A. We will look at it. Can I look at the transcript, 131.

Q. Doctor, can you tell us what you are looking at for the record, please?

A. I'm looking at page 132.

Q. Of Mr. Steinitz's deposition?

A. Yes, I'm looking at the last question, page 132, "Can you give us some idea of how much more he would have earned under the new system had he continued progress as you estimated he would?" And the answer is "This is a very difficult question to answer. I don't know. Maybe $75,000 but that's a guess. I cannot say.

"That would have been annually?

"That would have been annually."

Q. Is that the basis upon which you are suggesting it might have gone up to $75,000?

A. That's the basis on which I'm suggesting that increases could have been far more substantial than the six percent that I talked about.

Q. Doctor, if the statistics would have said, instead of six percent, they would have said three percent or four percent, would that change

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your answer?

A. I would have used the trends that I used in this case because I did not use as high as his actual recent so if they would have been three to four percent for that period of time, I would have used that.

Q. In the cases that you have testified in in the last couple of years, you usually use the six percent figure for wage increase. Isn't that right?

A. I have used six percent in many cases but I think you have a little confusion there, if I'm allowed to clarify it for you?

Q. I always welcome you to clarify my confusions.

A. You are confusing future wage increase with past increase. The '82 to the present, you really should call it the past wage increase. You are right in terms of future, I use six percent. In fact, in this case, I'm using five and a half for the future. So you see that it's not automatically so. I'm using a lower future growth rate but for the past, in this case, it happens to be six percent.

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Q. So in another case, it might be more, it might be less?

A. You have a difference. No, I want to make sure that I'm understood. When we talk about the future, it's a projection.

Q. I understand.

A. And I will tell you it can be more, it could be less. I'm using six percent for these reasons. The question of what his raise would have been between '82 to '91 is an ex post question. We know what wage increases during that period were. So it's a different thing and I have the sources for that. So it's not an assumption, it's not just a projection of what future inflation is going to be which will dictate what I'm going to say about the future. This is a different issue.

Q. I don't think that's what I asked but let's go on. The sources that you used to determine the six percent wage increase from '82 to '91, do they differentiate between different occupations?

A. I was looking to see whether there was a category sales managers or even executives in a similar capacity. And I don't remember that there

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were wage increase data, in fact, I remember -- this is mine?

MS. WALTERS: Did you mark his or yours?

MR. GARNICK: I marked mine.

A. Very soon, they will all be mixed up here.

Because I did not have specific wage increases for the categories that he falls into, I used a broad average, a very broad employment measure.

Q. By broad, you mean total?

A. I used total.

Q. Did you use occupation specific data in determining your unemployment calculations?

A. Yes. For unemployment, you have that.

Q. And you don't have it for increase of wage?

A. I don't know that it exists for increase in wage.

MR. GARNICK: Let's mark this Marcus 12.

(Whereupon the document was received and marked Marcus 12 for identification.)

A. I left part of the answer. I said I certainly don't know that such data exists and more

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particularly, that such data exists for the market area that we are talking about where he was operating, New York, New Jersey. He lived in New Jersey, worked in New York.

Q. Did you use market area for unemployment, doctor?

A. I used the only thing that was available, which was for that category, total.

Q. So the unemployment rate in New Jersey was unavailable between 1982 to 1990?

A. That's correct, for that category.

Q. For that category of?

A. For professional, et cetera.

Q. But for all workers, it was available?

A. Yes.

Q. For total?

A. Yes.

Q. And so you had a choice in dealing with unemployment, either you could use total for New Jersey or nationwide using that slice of occupation?

A. Yes.

Q. And you chose to use that slice of occupation for unemployment?

A. Yes.

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Marcus - direct

Q. Did you have a similar choice with respect to wage increase?

A. As I told you, I don't recall seeing it.

Q. Are you familiar with a Handbook of Labor Statistics printed in August 1989?

A. Yes.

Q. In fact, you rely on that book?

A. Yes.

Q. For your unemployment statistics?

A. Right.

Q. I hand you what is marked as Marcus Exhibit 12 and it is the first page of that document, along with pages 163 to 168. Doctor, doesn't that give you the same kind of data that you had for unemployment?

MS. WALTERS: Do you have a copy of this?

MR. GARNICK: I'm sorry, I do.

A. If you mean does it give you the same categories, the answer is yes.

Q. Let's look at page 163.

A. Yes.

Q. If you were going to make an estimate

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using this data, would you look under "Occupation, executive, administrative and managerial"?

A. Yes.

Q. In fact --

A. Would I look at that? I wouldn't make an estimate based on that.

Q. Why not?

A. You are talking about the totally different type of position because if you are looking at it, the wage that you are talking about in '83 is $21,000 a year. The man was making $51,000 in '82. This is a very broad category which for purposes of recognizing wage levels is totally unsuitable. For unemployment statistics, unemployment variations are, in fact, much more significant in a study like this, number one; number two, I don't think that there will be as much variations between categories within the broad employment category that you are talking about.

Q. Why not?

A. It is -- I can't give you specific evidence for that. It's a judgment that I would make for you that unemployment rates -- I can't really give you the basis for it but for that

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matter, I would be prepared to recalculate the unemployment rate using the New Jersey statistics and New York statistics. I think that that could have been done and maybe the answer would be somewhat different than what I have but I think the more relevant thing is to stay in the market area and to stay in this particular case not to use wage increases for a group of employees based on the wage levels, a different world than what he was.

Q. Doctor, this is the same kind of chart in the same book that you used for unemployment.

A. Yes.

Q. And they looked at the same type of people for purposes of wage increase and unemployment?

A. They look at the same -- the same categories, yes.

Q. The same category?

A. I understand what you are saying.

Q. You would say that it's unreasonable to use this data, that if an economist used this data to make a projection in this case, that would be unreasonable for wage increase but reasonable for unemployment?

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A. No, I'm not going to say that it's going to be unreasonable, I'm going to say to you I can see an economist doing that. I explained to you why I would prefer to do it the other way but I'm not going to characterize that as unreasonable.

Q. It's reasonable but not the way you would do it. Is that a fair statement?

A. I think that considering the position he was in in terms of salary and considering what I said before, that he was a competent and valuable employee, that he personally had experienced a much higher rate of increase, I thought and I still think that the six percent total wage increase in the economy would have been a conservative basis for it. However, I will not, as I sit here, tell you that it would be unreasonable to use this source, as well.

I would also point out to you that this source is deficient inasmuch as it doesn't go to -- I guess it goes to '88. We should go a little bit longer than that and you don't begin it with '82. I'm curious to see what it was in '82 because the increase is from '82 to the present. But having said that, I think I have given you my full

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opinion.

Q. Your unemployment statistics didn't begin in '82, did they? They began in '83?

A. Because he would have been possibly unemployed in '83.

Q. And possibly for the remainder of '82.

A. Okay, he was working in '82, but when you talk about --

Q. He wouldn't get a wage increase in '82, would he?

A. What is that? The wage increase begins relative to '82. So to calculate rates of growth, you would begin with '82 to the present. I don't know that that would make a significant difference. I'm not suggesting that that is the problem. I just point out to you that what you have given me, in any event, is not addressing exactly the period we are talking about and as I said to you, it's another way to look at it which I don't think is as reasonable.

Q. I want to pursue it for just a moment.

MR. GARNICK: Let me mark this as Marcus Exhibit 13.

(Whereupon the document was received

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Marcus - direct

and marked Marcus 13 for identification.)

Q. Doctor, I hand you what has been marked for identification as Marcus Exhibit 13 and it is a publication from the U.S. Department of Labor dated January 19, '91, entitled "Employment and earnings.

My first question is are you familiar with that publication?

A. Yes, I am.

Q. That supplies the data for '89 and '90, doesn't it?

A. Yes.

Q. If an economist were to use this data, can you tell me what the price, the salary increase would be from 1983 to 1990?

A. I would have to make the calculation. I really prefer not to do it now.

Q. Let me try to make that a little easier.

MR. GARNICK: Let me mark this as Marcus Exhibit 14.

(Whereupon the document was received and marked Marcus 14 for identification.)

Q. Doctor, I don't want to -- I represent

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to you that Exhibit 14 is correct. I thought it might be helpful in asking you to make these calculation to have this, which is my calculation, and I guess my question is if you could confirm whether or not my calculation as reflected on Exhibit 14 is correct? I have a calculator if that would be useful.

A. No. You want to verify the numbers, too?

Q. Yes.

A. It really doesn't matter. We go to the end here. All right, you want me to give it, to make the calculation of the growth rate between '83 and '90 based on the numbers you gave me?

Q. Yes, the numbers that are reflected in the statistical tables I gave you.

A. Yes, I will do that. The number is four percent per annum, which means that an economist that would use this method would be lower than I am by two percent per annum, two percent growth rate.

MR. GARNICK: This would be a good time to break for lunch, if that is acceptable to everyone.

MS. WALTERS: That's fine.

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(Whereupon the luncheon recess was taken.)

Q. Doctor, I believe that prior to the lunch break, you stated that one of the problems with using the data contained in Marcus Exhibit 12 and Marcus Exhibit 13 is that the total salaries reflected for the occupation of management and executive was low as compared to Peter Rossi's salary. Did I understand that correctly?

A. Let me state it more fully. I think there are two problems. One is that they are not on a regional basis and two, that on the face of it, it is quite different. But I will not say to you that these two problems render use of that statistic unacceptable or unreasonable. I just want to make sure for you. It's a trade-off. I use the broad trend for the local economy, which also has weaknesses and has strengths. So on the whole, I would say to you what you showed me is another figure that might be used by another economist.

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Q. I just have one more question before we move on and that is the data that you did use suffers from the second problem, as well, doesn't it?

A. Yes, it does.

Q. In fact, the total salaries in the data that you used are lower than the total salaries in the data that I used. Isn't that right?

A. Yes, you are absolutely right. However, it's a world of imperfect statistics and if you use an average for the total economy, presumably, at least as far as average growth rates, it will average them all out in a way that we can't even say how but it's the grandest possible average. We have not left out anybody. If you look for a category which appears to be comparable, professional executive, and immediately as you look at it, the pay rate is less than half, the average for the group than what the man was doing, I would say to myself why is it so -- why was he paid so much more than the average of this particular group? It raises some problems with it. But having said that, I will -- I don't want to knock one over the other or say that there is

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only one way of doing it and that was the way that I have done it.

Q. I have a few questions now about the unemployment allowance. According to your calculations, you deducted $22,619 from earnings lost reflecting unemployment allowance. Is that correct?

A. Yes, that is correct.

Q. Can you tell me what unemployment allowance means?

A. Yes. An unemployment allowance is an allowance that I have made here for the possibility that he might be laid off in the future. I think I have answered your question.

Q. But you don't know whether Peter Rossi would have actually been laid off in the future, do you?

A. I don't know whether he would have been laid off in the future.

Q. In determining the specific unemployment rate, did you take into account the unemployment rate in New York City?

A. No.

Q. Did you take into account the

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unemployment rate in the dairy industry?

A. Dairy industry unemployment rate? I didn't know he worked in the dairy industry.

Q. What industry do you recall Peter Rossi worked in?

A. He worked in the food industry. That was my understanding, it would fall into the category of food.

Q. I won't argue with you. Did you take into account the specific unemployment rate in the food industry?

A. No, I thought the more appropriate one would be for his professional category and I would add that in this particular case, I believe that the allowance that I have made is, again, on the conservative side because he had worked steadily in the same place for a good number of years and since '76, so he had a record of about six years and certainly in the deposition of his employer, there was nothing indicating that there was something that there was the possibility of layoff. So having said that, I nonetheless did make the allowance based upon the professional group to which he belonged on the theory that if you are in

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sales, executive sales, you would pretty much be treated that way. You would move across that professional group rather than placing him in the food industry for the purposes of determining his likely unemployment.

Q. If you had taken total unemployment and had not differentiated among occupations, the number would have been higher?

A. It would have been about maybe about two percent higher, yes.

Q. Would an unemployment figure of 5.3 have been a reasonable figure to use?

A. Let me answer it this way: If somebody had used the total unemployment, which would have given, let's say, 5.3, that's your question, I don't think that would be an unreasonable way to go.

Q. The 3.3 percent that you used is comprised of both unemployment and disability. Is that right?

A. Yes.

Q. And what percentage did you account for disability?

A. .7 percent.

Q. And how did you derive that number?

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Let me --

A. I have it. I just have to find the document.

Q. I want to mark it, anyway.

MR. GARNICK: Mark this as Marcus Exhibit 15.

THE WITNESS: That's not the one.

MR. GARNICK: But I want to mark this, anyway.

THE WITNESS: I have it.

(Whereupon the document was received and marked Marcus 15 for identification.)

A. In effect, what I have done is take the differential -- what I have done is converted the probability of being disabled to probability of being laid off, which turned out to be .7 percent. So it's an adjustment that reflects differential unemployment for disabled people and the incidence of disability.

Q. Can you take me through step by step how you calculated the figure? I really didn't follow it and I want to understand it.

A. Okay. The first step is, if you look -- look at the second page.

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Q. For the record, you are talking about the excerpt that you have given us from labor force status and other characteristics of persons with a work disability, 1981 to 1988?

A. Yes.

Q. It's not separately marked for identification but it's within the papers that you provided, that you generated for us, right?

A. Yes.

Q. And you are referring me to page -- is this page six? In my version, I can't see what page it is.

A. Page five.

Q. Page five, okay.

A. And then the next page, there are some calculations at the bottom.

Q. I could not read those calculations.

A. I'm just saying we will follow those. The first thing, if you look at page six, you will see that the unemployment for people with work disability is 9.2 percent for people in his age, 55 to 64. People with no work disability is 4.1 percent. There was a study that was done in '88, and I'm going to use the relative magnitudes in the

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adjustment, this suggests that unemployment of people with work disability is actually 124 percent greater than the unemployment rate of people with no work disability and down below, it is shown as 1.244. That is then applied to the base unemployment rate appropriate for this man, which I used to be 2.6 percent in another handout that I gave you, yellow, at the bottom has 2.6 percent. So I'm now saying that I have to multiply 2.6 percent by 124. That gives me 3.23 percent. Do you see that?

Q. Yes.

A. The next thing is -- so that means that the differential unemployment for people with work disability is 3.23 percent over and beyond for those without work disability. Then the question is what is the probability that the man would be disabled for some period of time during the year and for that, you turn to page -- the first page I gave you and you see that the percent of persons 16 to 64 with work disability, if you go again 55 to 64, it's 22.4 percent. That means the probability is .224. If you go back to the next page, I multiplied 3.23 times the probability of being

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disabled of .224 and I get .72 percent. That .72 percent was rounded to .7 percent and was added to the 2.6 percent to come up with 3.3 percent.

Q. Thank you. I do want to direct your attention now to the document that has been marked Marcus Exhibit 15 and I believe those are your, reflects your calculations with respect to disability for purposes of household services.

A. That's correct.

Q. Let me direct your attention to page 28 and on the copy that I have, I see some lines circled, some numbers circled on the page. Is that your circle?

A. Yes.

Q. And it says under 65 years, under "Total for disability," there is a figure of 1.9.

A. Yes.

Q. Would it have been reasonable for an economist to use 1.9 as a figure for disability?

A. For disability for services around the house.

Q. Would it be reasonable for purposes of disability for purposes of earnings lost?

A. No, because disability is really a

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broad term and the previous reports specifically talked about work disability. People who consider themselves disabled for purposes of work is one category, which is defined specifically in terms of ability to go to work. In the question of service disability, I had to look for disability to render services around the house as people define that disability around the house, which is a different thing. I may be too sick to go to work but I may not be sick enough to clean my room and prepare meals.

Q. Wouldn't that mean that the disability rate would be greater for employment than for working around the house?

A. I'm not prepared at the moment to tell you which one is greater because all I'm saying to you, that these are two different rates and for the particular disability calculation, I used, for each particular one I used the appropriate one.

Q. And so you think that for an economist to use the 1.9 figure and to presume that if you are too disabled to work around the house, you will be too disabled to go to work, that that's -- that would be an unreasonable thing to do?

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A. Look, if we have two separate surveys, one that says, that defines the incidence of work disability specifically and one that defines the incidence of work around the house, it makes more sense to use each one for its particular purpose.

Q. I understand what you are saying but I think I asked a different question; at least to my mind, it's a different question. Would it be unreasonable for an economist to use the 1.9 figure for purposes of earnings lost? I'm not asking you if it's the most reasonable or the most sensible, would it be reasonable?

A. If you had no other statistics? You know, one case is disability defined as people who need assistance from another person in the home. You say to me that statistics, should I use it for people who can't go to work. And I'm saying to you I don't want to speculate on whether it's a good measure of it because I have specific surveys each designed for the particular purpose that I want from reliable sources. So if a person wants to rationalize and argue, I'm willing to listen. But the point is that I'm simply trying to explain to you what I did and why I did it and I think I don't

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know that I can add anything to it.

Q. Doctor, I appreciate that and I'm not -- I want to ask a different question and as I said, I think it is a different question. I'm not trying to argue with you and if you can answer the question yes or no or maybe you can't answer it, then let me know. The question is very simple. If someone who had this material in front of them, if an economist who knew everything that you knew decided to go with a 1.9 percent figure for earnings lost, would that be unreasonable, in your opinion?

A. To use that instead of what?

Q. Instead of what you used.

A. Oh, wait a minute, you missed entirely what I'm doing. I'm not -- you can't compare the 1.4 with the .7. Is that what you are doing? Is that what you are asking me, could one use 1.4 instead of 0.7?

Q. No, I'm asking if an economist used 1.9 --

A. Instead of four, I have given you six different numbers here. Tell me instead of what and I will try to answer you.

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Q. Instead of the .7.

A. The 1.9 gives you at a point in time the number -- absolutely not because the 1.9 is the incidence of being disabled. The question is how long would you be unemployed. You have two issues, you have the issue is what is the probability that you are going to be disabled and if you are disabled, how much more unemployment rate you are going to have because just because you are -- the unemployment rate for people who define themselves as disabled, you can be disabled and work. You can define yourself disabled in particular terms, have work disability, you don't have an arm, you don't have a leg, and work. So what you are comparing, you cannot use the 1.9. My answer would be no, you cannot use that in lieu of .7.

Q. Thank you, doctor. That was my question.

Doctor, you also added under earnings lost for fringe benefits.

A. Yes.

Q. And you added $99,422. Is that correct?

A. Yes.

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Q. Can you tell me what fringe benefits Mr. Rossi received?

A. I will tell you the fringe benefits that I included.

Q. I will get to that. Can you tell me the fringe benefits that Mr. Rossi received?

A. I believe -- yes, I can tell you some of them. He had a company credit card for purposes of customer entertainment as well as telephone credit card; he had paid vacation and paid holidays; he had medical insurance and he had a retirement plan.

Q. And what is the source from which you rely for this information?

A. This was information that I have been asked to assume to be valid, was included on the questionnaire that was supplied to me.

Q. And who asked you to assume that this information was valid?

A. In effect, that was, since I got it from counsel, I treated as assumptions provided by counsel. There was some, my recollection is that I also read someplace about the credit card in some of the depositions but I can't put my hands on it

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now as I sit here. But for my purposes, it is an assumption that he had these benefits, which means I will assume that there will be testimony to that effect at the time of trial.

Q. Did you investigate what fringe benefits Mr. Rossi's company has offered to its employees since 1982?

A. No.

Q. Could the fringe benefit package offered by his company have changed since 1982?

A. Could it have changed?

Q. Could it have changed?

A. It could have but it's unlikely.

Q. Would the information, that is to say, what fringe benefits Mr. Rossi's company has offered since 1982, would that information be relevant to your determination?

THE WITNESS: Could I have the question again, please.

(Whereupon the record was read.)

A. I'm not sure I understand your question. I can tell you where I have a problem and maybe you can clarify it.

Q. Please.

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A. Are you asking me would it have been useful for me to validate that at this time, similar benefits that I have assumed continued to be offered? Would it have been of use to me to check on whether they continued to offer the benefits that I have assumed? Is that the question?

Q. Let me clarify. Sort of. I'm not asking you whether it would have been helpful to validate what you assumed to be true in the letter that you read and in the form, in your form. My question is different. My question is would it have been helpful to see what benefit package Mr. Rossi's company had offered since 1982 in determining what Mr. Rossi's fringe benefits would have been should he have lived?

A. I still have that problem. I did not value the whole package, I valued only medical insurance and retirement. So the question in my mind -- so I really -- I have no doubt that holidays and vacations continue. So for all intents and purposes, I have assumed that these benefits continue to be offered to people in his place of work. I don't know what I would have been

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able to validate -- to check on.

MS. WALTERS: Do you understand his concern? You asked him a question about whether it was important for him to know whether certain benefits existed and included in that question were benefits that he didn't even consider in his opinion. That's why he has a problem with your question.

MR. GARNICK: I follow it. Thank you.

MS. WALTERS: Maybe you can rephrase it based on that clarification.

MR. GARNICK: Thank you for that clarification.

Q. Dr. Marcus, you also deducted $195,563 for personal maintenance. Is that correct?

A. Yes.

Q. Can you tell me what personal maintenance is?

A. Personal maintenance expenses that need to be deducted are avoidable expenses that in theory -- let's put it this way: That had the person continued to live, these amounts of money would have gone solely for his maintenance and therefore, they would not have been available to

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survivors. We are deducting expenses that can be specifically attributed to the decedent.

Q. And can you determine how you calculated this amount?

A. Yes. The way I have done it is this way: Let's assume we work with $100 instead of $50,000. If you have a family budget of $100, I assume, based on a large number of studies, budget studies, that about 30 percent of the family budget goes on housing expenses. These housing expenses by their nature are unalterable, irreduceable following the death of somebody. So in effect, out of a family budget of $100, we are now left with $70 that would have been available for the disposal of the members of the family.

For a variety of reasons, I assume that on average, both members of the family share equally. Everybody gets the same share of disposable income. That means that the 70 percent that is available is divided into two in this case and it becomes 35 percent. So ultimately, I wind with 35 percent being allocated to the decedent.

Q. You said that housing expenses are unalterable. Why would that be the case?

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A. The point is that they have to continue to live, presumably they lived in the same bedroom, slept in the same bedroom, they had a kitchen, they had a living room and whatever. If he dies, what is she going to do, buy an apartment with a smaller bedroom? So for all intents and purposes, the housing expenses have to continue to be met. There is a great deal of inflexibility in housing expenses but I think primarily for the reason that I gave you. So this is why I subtract the 30 percent as common fixed family expenses.

Q. Does it make a difference whether Ms. Rossi would have been employed between 1982 and 1992?

A. It is -- there are no hard rules to answer that question. I can't tell you yes or no. I can't answer that.

Q. Why not?

A. It really depends on the case. To begin with, as you can see from my method, there is an approximation because people don't keep records of what they spend. Families don't expect to be put in this situation and have to account how much they spent for this, how much for that, how much he

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ate, how much she ate. So the bottom line is that there is really no way to know precisely how much the person would have consumed for his own maintenance.

Having said that, it means that you are doing all kinds of averaging. You are not really keeping score with an accounting sheet which says mark another dollar for cigarettes in this case or mark a dollar for shining shoes and did you leave out this. This kind of precision is not available. That's why I'm assuming equality.

It's against this general background that I really don't get into -- don't try and reconstruct expenses. So it's possible that he had some expenses going to work but in the scheme of things, he might not have had -- he might have consumed as much in the beauty parlor as his wife and might not have spent as much in clothes and also he had a credit card and we don't know how it was used. So I would say to you if there is a glaring case where there is evidence that the man for whatever reason was working in Washington and living in New York and was flying to work and had to pay for the tickets and you are talking about --

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I certainly think in that case, one has to possibly consider it. But in the run-of-the-mill case, given the overall built in approximations that go into personal maintenance, I would not think that particular concern need be paid to whether he was working for purposes of personal maintenance or not.

Q. I was trying to get at something a little different. If she was working, if his spouse was working at the time, would that make a difference?

A. I don't understand that question.

Q. If Carolyn Rossi would have been working between 1982 and 1992, would have been making money, would have been on salary, wouldn't that have reduced the percentage of Mr. Rossi's salary that would have gone for common expenses?

MS. WALTERS: Actually, she was working, right?

MR. ALLINDER: Is that an objection?

MR. GARNICK: Just object.

MS. WALTERS: First of all, I don't know what you are trying to do here because the witness knows that Mrs. Rossi was working at least

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during a portion of that period.

MR. GARNICK: If you want to stipulate that she would have had the same job and same employment even if Mr. Rossi would have lived, then I think your objection is well taken.

MS. WALTERS: No, I'm not stipulating to that. Clearly she wouldn't have worked had he lived.

MR. GARNICK: Thanks for testifying but --

MS. WALTERS: I don't know what it is you are trying to establish here and if you are making representations about what if when you know she did, that's what I don't understand.

MR. GARNICK: Miss Walters, just make an objection to the form.

MS. WALTERS: I object to the form.

BY MR. GARNICK:

Q. Doctor, can you answer the question?

THE WITNESS: May I have the question again.

Q. Let me restate it. If between 1982 and 1992, Peter Rossi had lived and if at that time,

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Carolyn Rossi was working and taking in a salary, would that make any difference in your calculations on personal maintenance?

A. Would I change my calculations?

Q. Change it, yes.

A. No.

Q. Why not?

A. Because my understanding is that we are talking here about the incremental loss, that is, you start with a chunk of income and now you say the family would have had that much more income. Over the long run, that income would have been allocated in a particular way, adjustments would have been made. And I'm addressing myself to the disposition of this additional income based on the allocation that I have set. So I'm not combining the incomes in this calculation.

Q. Let me probe that a little further. Let's speak hypothetically because I want to understand the principle that's involved here. If Carolyn Rossi had brought in an equal amount, another $50,000, so that she was bringing in $50,000 and Peter Rossi was bringing in $50,000, under that scenario, would you still deduct the 30

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percent for common expenses from Peter Rossi's salary for his personal maintenance -- I mean for common expenses?

A. The way I understand the methodology, the answer is yes.

Q. I guess that's what I don't understand. Could you try to explain that to me one more time?

A. Look, maybe I will do it for you in a more extreme example and you will see what happens with your calculation. Suppose she was making 100 and he was making 10. Under your method, the defendant would have to be given credit for the savings that she has now that the husband died and she has to spend less on him.

Q. I'm only talking about common expenses, though. Common expenses --

A. If you push it all the way, the moment you are now saying let's put her income in it, too, you don't have to stop where you have gone, you can do it with 10 and a hundred and come up by saying she is better off that he died because now she doesn't have to give him anything. The way I have understood it over the years is you are talking

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about -- you are looking at the family with and without an incremental income. That's what you are doing. That's the way you should do it. And you are saying the incremental income that we are talking about here is $50,000 more. Given enough time to allocate it, it becomes adjustments, that $50,000, how much of it would accrue to the wife in gains over and above.

You are starting with a base. You now say he could have been dead -- he is dead, he could have been alive. So you are really going to ask out of the $50,000, you are going to ask given enough time for the family now to allocate it among themselves, move to a better home, they will do this, they will do that, what is the loss that she sustained out of the 50 that would have been available to the family. And it's within that scheme that the methodology that I described to you is still valid.

Q. Would your answer be the same if all I'm interested in is paying common expenses?

A. My answer would be the same, yes.

Q. Doctor, in determining how much to deduct for common expenses, did you look to see

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what Peter Rossi's common expenses actually were?

A. The actual housing expenses?

Q. Actual housing expenses.

A. I have relied on budget studies that show consistently in a number of these studies, consistently a family spends about 30 percent. Given the fact that we are talking about, in this case, more than 10 years of prospective life, it's a long enough period of time where again, we have to make estimates and I would make an estimate based on budgetary data which are statistics for a large number of families.

Q. I agree we have to make estimates but wouldn't it be a more accurate estimate if you also take into account what the common expenses actually were?

A. There are a number of problems. First you talk about common expenses as if it's easy to tally them. You will have to add utilities, you would have to add taxes, you would need to do -- you would need to consider some maintenance done by outsiders, you would need to consider furniture, which is common. Families typically do not keep an adequate record of this. If I did it, you would

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say to me but when did they buy the furniture and what is the depreciation and what if utilities go up and what if they change the house and what if they renovate. There are enough uncertainties that I would say to you I would feel more comfortable on reliability, given the certainties of tallying that, analyzing it properly, and considering the fact that whatever you are going to get you are going to get for the last two or three years and you are talking about another 10 or 11 years into the future. For all these reasons, I would stay with the method that I have described to you.

Q. Doctor, what if it was the case that Mrs. Rossi had paid off the mortgage of her house as of 1984 and so you didn't have the mortgage payments anymore? Is that fact also irrelevant in your analysis?

A. It is irrelevant inasmuch as you give me one piece of information, one point in time. It is possible that the next year, they would have taken a big home mortgage loan and expand. What I'm saying to you, in general, this is allocation of income. It may not hold at any single point in time but when you deal with fairly long periods of

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time, you need some averages and unless I would go back 10 years for her to see what the past 10 years were, I mean you are taking one spot in time. People don't necessarily continue to live exactly in the same way. So I can't accept that single phenomenon as a reason for changing the allocation.

Q. Doctor, are there any specific facts that would make a difference in your analysis?

A. In my opinion, there are two alternatives, the alternative of facts. If you want to go the fact route, you need a diary of all expenses. Don't stop with fixed family housing, precise allocation, analyze them, who eats more, who uses more the cleaners, who goes more to the beauty parlor, whatever. Do it for a representative period of time, adjust for abnormalities. If somebody wants to go this route and say to me look to this family, here is a pattern, it's persistent, it's accurate, everything has been accounted for and within that scheme, housing turns out to be small, I would consider it if such a total reliable analysis could be done. But to do a fragmentary thing, to take a couple of facts which point in one direction and alter stable

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budgetary results I think is more likely to distort the analysis than the method that I used.

Q. Doctor, you have applied the same formula to fringe benefits. Isn't that right?

A. What do you mean by the same formula?

Q. You deducted fringe benefits to take into account personal maintenance, didn't you?

A. That's correct.

Q. And you used the same formula?

A. I used the entire compensation for the reasons that I explained.

Q. But you applied the same formula for fringe benefits, right?

A. Yes.

Q. Do fringe benefits go to pay off common expenses?

A. No, they don't. But the problem is you start --

Q. I'm not --

A. I understand what you are saying. I want to answer the question.

I think that there are all kinds of elements that go into it. For example, in the fringe benefits, I didn't take the market value of

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the benefits. For example, the medical insurance that I valued, the comprehensive medical insurance, family medical insurance, the value that I gave it is about $3,500. I can assure you that you can't purchase that at that price. And this was group and I have used the average. If you were to say but what is the value of medical insurance to this woman who happens to be now also suffering from Parkinson's disease, it may be invaluable. I have put all the earnings components in one basket and I have allocated it equally among them and it's entirely possible that if you -- that you pick one element and it will turn out that X dollars is more for this party than the other but the alternative is to do a diary style approach, which I don't think can be done, and I have stayed with a simple allocation based on equality.

Q. Would it be unreasonable for an economist to take fringe benefits and not deduct 30 percent for common expenses?

A. If you say to me if I had seen it done by somebody, would I have been shocked by it?

Q. Would you think it's unreasonable? Not shocked, unreasonable.

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A. No, I would say that this guy is too technical, leaves out the big picture and judgment is a little bit off. No, I wouldn't call it -- well, I think you would be mixing the elements. This is the problem. You are starting to mix elements. You are starting to do partly the method that I'm doing and partly allocation based on specifics. I don't want to call it unreasonable. I don't think it's as reasonable but there are degrees here.

Q. Doctor, you also deducted $203,484 for income tax liability. Is that correct?

A. Yes.

MR. GARNICK: Let's get this marked as Exhibit 16.

(Whereupon the document was received and marked Marcus 16 for identification.)

Q. Let me hand you what has been marked as Marcus Exhibit 16. Can you identify that, please?

A. Yes. These are the worksheets underlying the calculation of the income tax liability.

Q. As I understand these worksheets, what you did is calculated the actual tax rate in 1981

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and the tax rate in 1990 and then averaged them?

A. Correct.

Q. You don't know, though, whether Mr. Rossi's taxes could have actually increased in 1982, do you?

A. '82?

Q. In '82. They could have increased?

A. Yes. The last full year of work was '81 so I took the last full year of income. '82 was the year of the death. The income was much lower in '82.

Q. If Mr. Rossi had lived--

A. Oh, if he had lived.

Q. -- his income tax might have been actually greater than what it was in 1981?

A. It might have been greater, it might have been lower. I don't know.

Q. Doctor, is it possible that if you -- I guess to determine what Mr. Rossi's taxes would have been in 1990, you had to project a rate and make certain assumptions about salary. Is that correct?

A. Correct.

Q. If you had done the same projection for

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1991, isn't it likely that the tax rate would have been higher?

A. For 1991, for this year?

Q. Yes, for this year.

A. The one we are going to file in 1992?

Q. That's right.

A. I used the last tax schedule that I had, which is for the year 1990. I don't know. The answer is I don't know.

Q. I don't live in New Jersey but it's my understanding that the tax rate has gone up in New Jersey. Is that correct?

A. Unfortunately, it did.

Q. It's gone up from a minimum of 3.5 to 7.5. Is that right?

A. I don't remember the figures.

Q. Something like that?

A. Something like that.

Q. Would that have had an impact on Mr. Rossi's taxes in 1991?

A. I would have to -- I really can't answer that. I would have to calculate it and don't forget, though, that I have used an average and that 1991, we are assuming, in fact, the whole

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loss is being ended on May 15, 1992, so you are right, in 1991 might be higher. I don't know, then it might affect the average. But I took the '82 -- I'm sorry, I took the '81 tax rate, I took the '90 tax rate. I got two points. I averaged them and it's possible that '91 would have been -- would be marginally higher. I would have to calculate it. I don't know.

Q. Doctor, let's talk a few minutes about future earnings and according to your calculations, you put future earnings loss at $47,038. Is that correct?

A. I'm sorry, I didn't hear that.

Q. For future earnings loss, you set that amount at $47,038. Did you discount future salary?

A. No.

Q. Why not?

A. We are talking about six and a half months of future. So if the trial is going to be held by May 15th, you may have some future period. There are transaction costs that I spoke to you before. If you are about to get a chunk of money to pay essentially living expenses for six months, number one, the six months is going to be available

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to you on average for three months because -- let's put it differently.

Some of the first few months, you need to make a living -- you would need to live on, you would need to draw on it. You are talking about when a period is so small, there is just no way of saying whether the people would just deposit it in the checking account or whether they will buy -- they will put it in a savings account, in which case you get five percent on three months. I would say to you for practical purposes, when you deal with a future period which is so short, I don't know that it's realistic to assume that the family is going to invest it and get a return. If you are not going to invest it, if you are going to keep it because the period is so small, then discounting is not appropriate.

Q. I'm confused. I didn't know -- I didn't think the issue was whether the people who would receive this money intended to invest it or not. I thought we are talking about the present value of money.

A. You are right but it's not unreasonable for people who are told here is your income for the

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next six months, it would not be unreasonable for them, given the short time period that is involved and the low interest rate, it's not unreasonable for them not to invest. In other words, you have to ask would a reasonable person under the circumstances invest it and I think when you deal with being prepaid for earnings income for six months, it is questionable. I'm not going to argue with you that it would be improper to discount that and maybe I should have shown those numbers, too. You are talking here, I can tell you quickly that you are talking about $47,000 for six months, right now at five, five and a half percent, after taxes you are coming down to -- I forgot that, you will be coming down to about three and a half percent for six -- three and a half percent per annum for six months, so it's one and three quarter percent on $47,000, you are talking about $800 or so. Maybe if you wish to present it to the jury, you should do that.

Q. Of course, doctor, if the trial occurred after May of 1992, there would be no future earnings lost whatsoever. Is that correct?

A. That's correct.

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Q. So these calculations would change somewhat or wouldn't they?

A. Yes, they would but I certainly don't want to argue with you that it's improper to do the discounting. I concede that it's not unreasonable for somebody to say it still has earning power for up to six months.

Q. You did discount with respect to services, household services.

A. Yes.

Q. And your discount rate was 6.5 percent.

A. Yes.

Q. Can you tell me how you derived that discount rate?

A. Yes. At the time that I prepared the report, as at all times, I get publications on a monthly basis and sometimes on some publications, on a weekly basis. I get publications from the United Jersey Bank on tax-exempt securities in New Jersey and I can tell you that they have been running now for high quality, I'm talking about double A or higher, they have been running at under six and a half percent. So that was one, they

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vary, but I would say to you certainly six and a half percent would be probably in the upper end of the range.

The second consideration is the Treasury securities, which are another way to back into it. Because we subtract taxes from the earnings, we have to think about after tax yield on Treasuries. Treasuries have been running at about, long term, they have been running about eight percent, again, setting aside transaction costs. If you use the tax rate that I used in calculating the loss, which is 30 percent, and you assume that you buy Treasuries at eight percent and you pay 30 percent income tax, you will be down under six percent. You will be down at 5.6 percent.

So any way you look at it, if you give the defendant the benefit of saying let's buy tax-exempt, high grade tax-exempt, you will be no higher than six and a half percent. If you insist, if I had stayed purely with Treasuries, I would say to you that the offset would just about be right at this time, the offset between the growth rate and the discount rate, based on the factors that I have given you.

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Q. Is your discount rate an estimate of what future interest rates will be or is your discount rate not an estimate at all? I suppose this is a question of theory.

A. It is implicitly an interest rate of the rate of return on reinvested funds. It is explicitly the interest rate available for the award at the time that it is made.

Q. So it's a combination of both, would you say?

A. I'm saying that at the time of trial, if the trial is held October 1, '91, I would use a discount rate no higher than six and a half percent because that's what can be earned now. I have no basis for assuming that in the future, it will be higher or lower. So implicitly, it's an estimate of the future but in reality, I'm asking myself what is the interest rate that is available now.

Q. Let me just clarify a little bit. If it turns out that interest rates, let's say that the trial was October 1991 and it turns out that over the next 10 years, interest rates would rise significantly, then your discount rate and your calculation, when compared to the actual money the

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Rossis would receive through reinvestment, would undervalue -- overvalue, would overvalue the loss. Is that correct?

A. If interest rates were to rise, nothing changes at all, only interest rates rise, there will be some overstatement only to the extent it affects the reinvestment.

Q. Let's talk a little bit about past household services. You considered certain types of services in your calculation. Is that right?

A. Yes.

Q. What types of services did you consider?

A. I considered what I would describe as physical household services, such as maintenance and general assistance around the house.

Q. Can you be a little more specific?

A. Any work which would relate to upkeep, upkeep of the house and the yard and assistance to the spouse in household duties, whether it's major cleaning or carrying the bags or any work done within and around the house in relation to the needs of the family, which is physical. I want to emphasize physical.

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Q. And what did you base your assumptions on?

A. I had made the assumption that he provided assistance and that the assistance, I had no quantification of it. Again, people don't keep records of how much they do around the house so I have assumed an average household, average man in an average household and I went to a survey that gives the assistance provided by a man of his age and that survey showed an average of 10 hours over the entire period from age 55 over his remaining life. That is what I took. In some years, it would have been seven, in some years it would have been about 12. I think the average is just about 10 and that's what I have done. I assumed that he gave the average, that over time, he will do the average. 10 hours can be looked at an hour and a half a day or it can be looked at as four hours on the weekend and six hours during the week or it can be looked at more on vacation days. In other words, I have not made an assumption that this will be done every day or every weekend but that whatever he does will amount to the average.

Q. You do not know, though, how many hours

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Peter Rossi would have spent doing household services had he lived, do you?

A. I do not.

Q. So you did not base your assumptions on any facts in the record, did you?

A. That's not correct. I have been advised, and there is a letter that says he did do household work and so I assume that there will be testimony to that. In fact, his wife referred to it and she would be the person to testify on it, at least that has been my experience in this kind of case.

Q. What household work were you told that Peter Rossi did?

A. I was told that he helped with light housekeeping, general maintenance as needed, yard work and snow shoveling.

Q. Did you know that Carolyn Rossi testified at her deposition that her husband did not do any yard work?

A. No, I did not.

Q. Would that affect your opinion in this case?

MS. WALTERS: If you are making that

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representation, why don't you refer him to the page of the deposition.

MR. GARNICK: I just want to make that representation.

A. If it turns out that the yard work -- let me answer it differently. I have used an average. The average, to begin with, is built on the understanding that some men will do more of one and less of the other. So it's not required that everybody do yard work. What I have assumed is that he did a fairly representative list of activities. Yard work itself is done only in the summer so it's three months a year, it turns out not to be the dominant activity around the house. So that by itself will not lead me to discard the use of the average, that by itself.

Q. Did you know that both Carolyn Rossi and Susan Haines testified that Mr. Rossi didn't do repairs around the house and Susan Haines testified that Peter Rossi was not the handyman type? I want you to assume that.

A. I did not read these things and if it turns out that he was not the average man, that's a factual question. I assumed he was, that he was an

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average in the sense that he did a mix of things based on what his wife told me. If it's incorrect, then that loss calculation should not be there.

Q. I thought you reviewed the summaries of the depositions to determine if you should use the average or not in this case.

A. What I said to you, if you want to go back to the beginning of the deposition, I satisfied myself on the companionship and guidance from the relationship and I said to you that there was a letter from the wife. I did not say to you that I read that he did physical services around the house. I specifically -- when you asked me what I based it on, I read to you from the letter of the wife. So I'm not here to tell you whether the facts as the wife presented them to me are valid or not.

Q. If we assume that Peter Rossi did not do any yard work, did not do repairs and was not the handyman type, if we assume that, would it be reasonable for an economist to use an average seven hours a week rather than 10 hours?

A. I certainly think that he was not the average, in other words, if I understand your

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assumption, no yard work, no maintenance around the house and no repairs, at that point, I would say that the average would be too high.

Q. What would be another number?

A. It would be a judgment. Certainly anywhere seven to five, if it's a judgment, if -- in other words, if you are going to tell me he did very, very little, I would have to get more information. I have assumed that he did a mix of things and then I use the average. But if that's not the case, certainly the average should not be used.

Q. I want to be very specific in what I want you to assume. I want you to assume that he didn't do any yard work, I want you to assume that he didn't do repairs and I want you to assume that he was not the handyman type.

MS. WALTERS: Do you want him to assume that he didn't do anything around the house or just he didn't do repairs around the house?

MR. GARNICK: Please, I think I'm being very specific.

MS. WALTERS: No, because -- I don't think you are. You want him to exclude those?

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MR. GARNICK: You can object to the form, please.

MS. WALTERS: I did.

MR. GARNICK: Thank you.

BY MR. GARNICK:

Q. Let me repeat. I want you to assume that he didn't do any yard work, that he didn't do any repairs around the house and that he was not the handyman type. That's all I want you to assume because that's all I have from the record.

Based on that, would it be reasonable for an economist to estimate it as seven hours a week rather than 10?

A. It would not be unreasonable.

Q. Would six be unreasonable? I couldn't resist. I'm sorry.

A. I know. I can't answer that. Let's put it this way: Around seven.

Q. Okay. Can you tell me how you estimated the current value of these services? I believe you valued them at $12.50.

A. Yes, $12.50. The $12.50 is based on -- it's really a composite. It's not a strict

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mathematical average, it's a judgment based on a range of what are the hourly rates charged by maintenance personnel in New Jersey, maintenance, carpenters, maintenance electricians, and in particular, homemakers. In fact, the $12.50 corresponded to the homemaker rate and a homemaker is a stand-in for general assistance around the house.

Q. How did you determine that $12.50 was the rate? Was it a table?

A. Pardon me?

Q. Did you use a statistical table?

A. No, I didn't use a table for that. I write to employment agencies that provide homemakers and based on their responses, it was $12.50 last year. It is now $13.50.

Q. So you are relying upon a letter that you received from people who provide homemaker services?

A. I rely on quotes, on price schedules where they say that's what we will charge you for a homemaker.

Q. Did you produce those price schedules in this case?

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A. Did I?

Q. Did you?

A. No, I did not.

Q. Why not?

A. Because I did not specifically rely on them. It is -- I told you $12.50 is a judgment based on consideration of a variety of inputs. I did not look to that table, to those quotes, when I did the report. It was in the back of my mind, the back of my mind that homemakers in New Jersey for the last year, the rate has been about $12.50.

Q. Do you generally rely upon these schedules? I mean you rely on them in part for your calculation, don't you?

A. Of course I relied. I also rely on interest rates. My answer to you is I provided any documents that were specifically used for this report in the preparation of the report. I have just told you that in valuing household services, I have used for many months $12.50 an hour because it's broadly falling within the range that I have told you, maintenance occupations, and it is about what homemakers charge. There is a range around that.

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Q. But that's not the only thing you relied upon?

A. What do you mean it's --

Q. You also looked to see how much electricians cost and carpenters cost. Is that right, or do I misunderstand?

A. No, you are right. I know that maintenance personnel rates vary somewhere between, depending on the skill, somewhere between $10 and $15.

Q. How do you know that?

A. I have looked at these things. I have prepared reports before and it's a frequently done -- it's a frequent statistic that I use.

Q. Where did you get the statistic?

A. The statistics from the electrician and maintenance?

Q. Yes.

A. They come from area wage studies in the New Jersey area.

Q. Why didn't you produce the area wage studies in this case?

A. Let me answer it again. I did not specifically use them, I did not have them in front of me when I did the report. I will be happy to

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give it to you, the same way that I did not specifically have the interest rate. I didn't produce that, either, because if I look at things on an ongoing basis, it was not my understanding that I have to give you everything that I look at.

Q. Doctor, I think I asked very specifically for any relevant government or other publications that you reviewed and relied upon in connection with your anticipated testimony. I don't think I asked what you had directly in front of you, what you held in your hand. I think it's one thing to rely on interest rates, market interest rates, you know, I can determine what the interest rates are relatively easily. But I don't have a clue as to what statistical tables you used to determine the cost of electricians in New Jersey.

MS. WALTERS: Is this is speech or is this a question? It sounds like a speech to me and if it is a question, I object to the form because I don't know what part of it you are asking this witness.

Q. Doctor, did you inquire as to how much Ms. Rossi actually paid to have these household

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services, jobs performed between 1982 and 1991?

A. No.

Q. Would that be relevant to determining household loss, a loss of household services?

A. No.

Q. Why not?

A. There are two possibilities. One, that she didn't have it done, she didn't have some of the assistance, she didn't have some of the maintenance. That would mean that the standard of living suffered and so the fact that she may not have spent money on replacement services really would not alter the loss that in this case is the time available by her husband which is no longer available to her. That time was available, was provided before, that time has value and I valued it. Whether she chooses to replace it or not is really irrelevant to the valuation of the loss that she sustained.

Q. But if she -- let's say she got a neighborhood kid to do some of these things for a below market price. Would that be relevant to your analysis?

A. I don't believe in a below market

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price. The market is functional and the only thing that you would be observing with what you are saying is that some of the activities in the composite are available at perhaps a very low rate. The $12.50 is a composite, I said that; I said $12.50 is a judgment. I said it's not derived mathematically and I think that it is possible that some services can be replaced at five dollars an hour; on the other hand, the reality is that some calls that people make for people to come to the home, in fact, you can't get anybody to come to your house for $12.50 an hour to fix anything of skill. Lawn maintenance services are used more frequently than kids. This is the new development and the kid available here and there to do something at a low price I don't think alters the basic value of the household services.

Q. Doctor, it's possible, isn't it, that she got most of the loss of household services performed at less than $12.50 an hour?

A. Is it possible?

Q. Is it possible?

A. Highly unlikely.

Q. And these are the household services

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that Peter Rossi would have done if he had lived. Is this right?

A. Yes, that the average man would do around the house and what a homemaker would charge.

Q. If you assume that, and I would like you to assume that Mr. Rossi didn't do any yard work, didn't do any repairs around the house and was not the handyman type. Would that affect your analysis at all?

A. In order to give you an answer, I would also ask you whether there were any statements of what he did do around the house. You told me what he did not do. Are there statements of what he did do? As I told you before, I used an average. Some men assist more in one area and less in another. So to give you a complete answer, I would like to know, since you are citing the record, I would like to know what else is in the factual record before I tell you whether the average should be applied.

Q. That would be important to your analysis, to know what else is in the record, wouldn't it?

A. It would be important for me to know before the term "average" is applied, it's

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important for me to know whether the man did various services on a consistent, regular basis so that I can be satisfied that the average is applied.

I will give you an example. If the man didn't lift a hand around the house, certainly the application of the average would not be valid. If he helped a lot assisting her in cleaning and shopping for whatever reason or laundry, he may have done more of that. So I can't -- at this time, based on what you told me, I cannot tell you anymore whether he was or was not an average. I have given a valuation assuming that he was an average. But you have read some portions and I'm asking you what else is there before I can tell you whether factually, he was an average.

Q. Doctor, you were provided the depositions. Why didn't you review the record to see what was in there?

A. I'm not a fact witness and I'm not relying -- I'm not here to tabulate the facts. I have read enough from the wife to be satisfied from what I saw that what I saw, that average would be applicable. But I wasn't going to verify whether

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what she said is correct or incorrect.

Q. Doctor, you made certain adjustments to the value of household services lost. Is that correct?

A. Yes.

Q. One of the adjustments that you made is that you assumed that there was a six percent increase in the value of those services from 1982 to 1992. Is that right?

A. Yes.

Q. Which I guess you applied kind of backwards?

A. That's right.

Q. Since you had the current value of the services today. Is that right?

A. Yes.

Q. Where did you get the six percent?

A. The same answer I gave you before. I took broad wage increases in the New Jersey economy and I used it for his wages and I used the same for the services. Actually, here if I were to use 12 percent, it would cut the other way. But I used the six percent as the general trend in the New Jersey economy.

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Q. And you did not investigate how much the wage scale for these kinds of services went up between 1982 and 1992?

A. No.

Q. You also calculated future loss of services.

A. Yes.

Q. And how did you do that?

A. I have assumed the same level of hours, same hourly wage rate and I have assumed five and a half percent annual growth.

Q. And you also assumed how long Peter Rossi would live, as well, didn't you?

A. That's correct.

Q. On what basis did you assume how long Peter Rossi would live?

A. I used U.S. life tables.

Q. You used his life expectancy?

A. Yes, his life expectancy.

Q. Most people don't live exactly so long as their life expectancy, do they?

A. That is correct. Some die sooner and some die longer.

Q. And is it sound economic practice to

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apply life tables to specific individuals?

A. It depends for what problem. In this particular case, it was sound.

Q. You don't know exactly how long Peter Rossi would have lived if he had not died from lung cancer in 1982, do you?

A. That's correct.

Q. In assuming how long Mr. Rossi would have lived, did you take any -- did you take into account any of the facts from the record?

A. No.

Q. So you didn't take into account whether Mr. Rossi was under stress or strain?

A. No. That's assuming that there is a way of doing it.

Q. Or that he was a heavy coffee drinker?

A. Again, I didn't do it, assuming there is a way of doing it.

Q. Did you take into account any of his bad habits that might affect --

MS. WALTERS: I object to the form of the question.

MR. GARNICK: That's correct.

Q. Did you take into account any of his

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habits that might have possibly had an effect on his mortality?

A. I did not consider, nor would I know how to consider a person's habits, both bad and good, as they affect the life expectancy.

Q. Would you agree that it is at least possible that Peter Rossi would have died prior to reaching the age of 76.1 even if he didn't die in 1982 from lung cancer?

A. Is it possible?

MS. WALTERS: I'm going to object to the question because you are getting into possibilities and not probabilities. I think this whole area probably is preempted by virtue of the charge to the jury, which is the presumption they should assume or they should be instructed, rather, on the life expectancy set forth in the New Jersey rules. But I'm not instructing him not to answer.

Q. Please answer the question.

A. There is a possibility.

Q. Do you know what that possibility is?

A. It varies from year to year. The point of the matter is that the life expectancy is the midpoint. Half of the people his age would die

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before and half would die after. So there is an equal probability that he would die before as much as there is a probability he would die after.

Q. Is that right?

A. Yes, it is right.

Q. It's specifically equal that he would have died both before and after?

A. Let me put it this way: The life expectancy is exactly the point by which half of the people his age would die, which means half of the people would live beyond it.

Q. You assumed that the value of household services in the future would increase year to year by 5.5 percent. Is that right?

A. Correct.

Q. How did you obtain that number?

A. It's a judgment. My judgment is that from here on, on average, wages would increase five to six percent and I used the midpoint of five and a half.

Q. How did you make that judgment?

A. The judgment is that we are talking about essentially four to -- let me put it this way: On fundamental reasons, it used to be the

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projection of inflation of four to five percent, productivity one to two percent, and if you add the two, you would come up with about six percent. If inflation, and I think a lot of people still believe, let me say the four to five percent inflation is maintained by, at least in my judgment, maintained by a good number of people. However, inflation has slowed down and it's possible now that the long term trend inflation is going to be one percent less. Instead of four to five, we may be seeing three to four percent. If we are going to see three to four percent, and again, adding to it productivity, I think we will be coming up to -- we will be talking about four to five percent. So the broader range here, I would say to you that because inflation is lower, I think we may see at the lower end of it five percent.

One more thing to give you the full grounds, my judgment is supported, although it's not based on, it is supported by some projections contained in the President's economic report to Congress, which have projections of inflation and productivity, and they also point to the range of five to six percent.

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Q. Do you rely on the President's report for purposes of your opinion in this case?

A. What do you mean by "rely"? Do I give you five to six because the President's report says that?

Q. In part because the President's report says that, maybe not totally?

A. No. I think it is supportive of what I'm saying but I rely on more than that.

Q. When you say productivity, you mean GNP productivity?

A. I mean increase in man-hour output, output per man-hour.

Q. In the economy as a whole?

A. Yes.

Q. And you apply that to the household services?

A. No, I don't -- what I am saying is this: If wages in the economy as a whole are going to grow at five to six percent, then personnel in virtually all sectors of the economy will tend to receive the same increases, not each year, but on average, employees receive the overall wage increase and it's for that reason that personnel in

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household activities should be receiving -- hired personnel should be receiving the same increase.

Q. If an economist used as an estimate five percent instead of 5.5, would you consider that reasonable?

A. It's within my range so I can't tell you it's unreasonable.

Q. You don't actually -- you don't know, though, how much the market value of these services will actually increase over the next 10 years, do you?

A. I understand your question to mean I don't really know what will turn out to be the actual wage increase in the economy?

Q. Yes.

A. No, I don't.

MR. GARNICK: Why don't we take a break.

(Whereupon a recess was taken.)

Q. Doctor, first a few questions I might have neglected to cover along the way. How many hours have you or your colleague put in to this case to date not including the deposition time?

A. I don't know. I don't bill by the

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hours and we don't keep a record of it.

Q. How much have you charged or will charge plaintiff's counsel for work done to date, again, not counting the actual deposition time?

A. To date, I believe I charged $900.

Q. And what was that for?

A. That was for the calculations that have been made.

Q. That was for the report?

A. The report.

Q. Doctor, I note that the form that you use and the form that you received from the plaintiffs in this case is a form that seems to be geared towards plaintiff's attorneys as opposed to defendant's attorneys. Is that true?

A. The reason I'm looking at it, I don't think I even have to look at it, I think with the exception of the word "plaintiff's attorney," attorney representing plaintiff, I think that all questions would be applicable to defense attorneys.

Q. But do you have a separate form for plaintiffs and for defendants?

A. No, I don't.

Q. Do you provide this form to defendants?

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A. If they want me to do a report of this nature, then it is provided.

Q. And do they ask you to do reports of this nature?

A. Many times a defense attorney will call me after another economist has been retained and will send me his report and will send me the information in another form or would ask me to evaluate or make calculations so it's a little bit less structured than a plaintiff's counsel.

Q. Are there any cases, though, that you prepare an economic loss report for the defense?

A. Are there cases where I prepared reports on economic loss for the defense?

Q. Yes.

A. Sure.

Q. And do you ever use this form in connection with those reports?

A. I have.

Q. Do you use this form or do you have another form?

A. I don't have another form.

Q. And so to you cross out the word "plaintiff" in this form and put "defendant"?

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A. I don't remember what was done. They may put the name plaintiff. It's not that I frequently use it for defense counsel but I remember certainly on one occasion or a couple of occasions where this very form was used.

Q. Doctor, can you tell me, give me an estimate of how much compensation you received within the last year from preparing reports for plaintiffs?

A. I think you would have to -- if you want to do that, you would have to go by the averages that I gave you and multiply it and you will come up with as good an estimate. Are you asking now for the revenues, is that what you are asking me?

Q. That's right.

A. Before expenses, before payment to my associate and all that, I told you a couple of hundred and I told you the fee and if you want to average, it will give you some idea of how much I generated from preparation of reports.

Q. Doctor, in most cases, you usually prepare a document of some length, five or six pages long, called a study of economic loss or

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something like that, some similar title. Isn't that right?

A. That's correct.

Q. Did you prepare such a report in this case?

A. No.

Q. Why not?

A. My understanding is that I did not have to prepare a narrative, a full narrative but all I needed to do is show the conclusion and assumptions of the report and that's what I have done.

Q. So you didn't because plaintiff's counsel told you not to do it?

A. Plaintiff's counsel told me that all they needed is calculations and assumptions.

Q. Doctor, are you aware of any studies showing a statistical trend towards early retirement by people holding executive and management positions?

A. No.

Q. Doctor, I would like you to do one more thing and we are done and that is I would like you to do a calculation of earning loss and household services loss for Peter Rossi which is identical to

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the calculation you already did in this case with a number of differences. And the differences are these: Instead of using a 5.5 percent discount rate, I would like you to use a five percent discount rate. Instead of using ten hours a week for household services, I would like you to use seven hours a week for household services. Instead of assuming a six percent wage increase, I would like you to assume a four percent wage increase.

A. In the past?

Q. From '82 until -- not just in the past because you have six months into 1992. Instead of a 3.3 percent unemployment rate, I would like you to assume a 5.3 unemployment rate. And also in determining personal maintenance for fringe benefits, I would like you not to deduct 30 percent for common expenses.

A. I will need some time to do that.

Q. I understand that.

MS. WALTERS: How much do you want him to deduct for common expenses?

THE WITNESS: He doesn't want me to deduct.

MR. GARNICK: Nothing for fringe

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benefits. Deduct what you would normally deduct for the rest of the salary.

Doctor, I have some graph paper if it will be helpful.

THE WITNESS: Graph would not. I need to do the calculations and I would need, since you know --

MR. GARNICK: Do you want to go off the record?

MS. WALTERS: Yes, off the record.

(Whereupon a discussion took place off the record.)

BY MR. GARNICK:

Q. Doctor, let me just repeat to you the assumptions I would like you to make. The only assumptions I want you to change, I want everything else to remain the same, the only ones I want you to change is I want you to use a five percent discount rate instead of 5.5 --

A. I'm sorry, discount or growth rate? Do you mean growth rate?

Q. Growth rate, yes. Thank you. Seven hours a week instead of ten hours a week; four

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percent wage increase instead of six percent wage increase; 5.3 percent unemployment instead of 3.3 unemployment; and I don't want you to deduct 30 percent common expenses from fringe benefits.

A. Okay.

Q. Thank you.

(Whereupon a recess was taken.)

Q. Doctor, have you completed your calculations?

A. I have.

Q. And what have you come up with?

A. The bottom line is the loss would decline from $475,046 to $386,774.

Q. And can you review with me the components of that figure?

A. Yes. Although you repeated the assumptions, I want to say there is one assumption I interpreted that you were not very clear on and I want to tell you what it is.

Q. All right.

A. Let me go down the line. When I get to that assumption, I will clarify it.

Q. Good.

MS. WALTERS: Do you want to mark

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that? He has it written right on there.

MR. GARNICK: Let us mark it, that's a good idea. Mark it as Marcus Exhibit 17.

MS. WALTERS: Do you want me to copy it first and make a copy of what has been marked?

MR. GARNICK: That's fine.

MS. WALTERS: So you don't have to put an original sticker on this. Do that right now?

MR. GARNICK: That's fine. Let's do it.

(Whereupon a brief recess was taken, during which the document was received and marked Marcus 17 for identification.)

BY MR. GARNICK:

Q. Let's run down the components.

A. The gross loss to the assumed date of trial is $580,295; the future is $39,627; the unemployment allowance is $32,856; fringe benefits, $44,030, but I have to explain that the fringe benefits here is half, that is, I did not allow for -- zero common deduction and it is, in effect, net here of the personal maintenance so the fringe benefits that you see, $44,030, is half of the total value of the fringe benefits, which is

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$88,060.

Q. Why did you do that?

A. Let me just finish and I will explain that.

Personal maintenance $142,393 and income tax liability is $180,229. To explain what I said before, if you look at the previous sheet, the $195,000 personal maintenance was taken on the prior items, 65 -- it was 35 percent of all of this. Here I had to change so instead of adding the fringe benefits and coming up with some weighted average of personal maintenance, what I have done is I have taken immediately the 50 percent off the value of the fringe benefits. So if you wanted to add next to it, it could say here net of personal maintenance or fringe benefits and that means if the personal maintenance that I show down below is calculated only on the wages and not on personal maintenance, whereas before, it was on the wages and fringe benefits.

Q. I understand.

A. On household services, this is where I interpreted your assumption. What I have now is a reduction exactly by 30 percent from ten hours to

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seven hours and that's what I understood you wanted me to do for the household services, only, and nothing else.

Q. I think that's right.

A. Okay.

Q. Although I thought the discount rate you used would be 5.5 percent.

A. You meant the growth rate.

Q. The growth rate, you used 5.5 and I wanted you to drop it down to five.

A. Oh, the future growth? Here we are getting into -- okay, I didn't do that. So what you say to me, I missed that. That is a quick one.

Q. Is that something you forgot or is that something you think I didn't mention?

A. No, I forgot. You said that. You are saying to me that will come in only here. You want instead of using five and a half, you want me to use five percent of growth in addition to the reduction from 10 to seven hours.

Q. Yes.

A. It doesn't come in in the earnings.

Q. Right.

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Marcus - direct

A. That is quick. I don't even have to leave the room.

Q. Okay.

A. I have to give you the discount rate. Instead of using one percent, I will use a net discount of one and a half. That is, in effect, what you are telling me.

Q. Right. Doctor, can I ask you when you get the final figure, to write it on my Marcus Exhibit 17.

A. Will it be all right if I'm going to give you an approximate, fairly close correction on that?

Q. Sure.

A. Should I cross and put the new number right next to it and then adjust it?

Q. Why don't you do that, if you could do that to Exhibit 17.

A. Okay, I have it now. The half a percent discount rate, higher discount rate for that period reduces it by three percent more so the end result is that the present value of the future loss is $45,269 and that reflects a reduction from ten to seven hours and another three percent and

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the past service loss, $31,630, so the total service loss is $76,900 and the total loss is $385,374.

Q. So that number $385,374 is the number that you calculated based upon the changes that we have discussed?

A. Based on the changes that you have asked me to assume.

MR. GARNICK: I don't have any more questions.

MR. ALLINDER: I have no questions.

MR. CHRISTIE: No questions.

MR. TUCKER: No questions.

MR. COPLEY: No questions.

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C E R T I F I C A T E

I, GARY M. TALPINS, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, MATITYAHU MARCUS was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

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